

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rule
Amendments Governing the Individual
Sewage Treatment Systems Program,
Minn. Rules Chapter 7080

REPORT OF THE
ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles on August 29, 1995 at 9:00 a.m. in the Minnesota Pollution Control Agency Board Room, 520 Lafayette Road, St. Paul, Minnesota. Subsequent hearings were held on August 30, 1995 at 1:00 p.m. and 7:00 p.m. at the Public Meeting room of the New Ulm Public Library, 17 North Broadway, New Ulm, Minnesota; and on August 31, 1995 at 1:00 p.m. and 7:00 p.m. at the Saw Mill Inn, 2301 South Pokegama Avenue, Grand Rapids, Minnesota.

The Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, determine whether the Minnesota Pollution Control Agency (hereinafter also referred to as the "MPCA" or the "Agency") has fulfilled all relevant substantive and procedural requirements of law or rule applicable to the adoption of the rules, evaluate whether the proposed rules are needed and reasonable, and assess whether or not modifications to the rules proposed by the Agency after initial publication are substantially different from the rules as originally proposed.

Dwight S. Wagenius, Assistant Attorney General, Environmental Protection Division, 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Pollution Control Agency, Water Quality Division. The Agency hearing panel included MPCA staff members: Lori Frekot, Mark Wespetal and Victoria Cook. Also present throughout the hearing to answer questions were MPCA staff members Clarence Manke, Deborah Olson and Gretchen Sabel.

Approximately 38 persons were present at the hearing in St. Paul, 26 of whom signed the Rule Hearing Register. Eight persons provided oral testimony. Russ Wahl, representing three cities, West St. Paul, Mendota Heights and Sunfish Lake; Roger Johnson, Johnson Soil Testing; Joseph Johnson, Johnson Soil Testing; Michael Herman, Minnesota Department of Transportation; Clint Elston, Alas Can; Carol Lovro, Minnesota Association of Campground Operators; and Bill Schueller, Fergus Power Pump, Inc.

At the New Ulm public hearing scheduled for 1:00 p.m., 19 persons were present, 13 of whom signed the Rule Hearing Register and six persons provided oral

testimony. They included: Marlo Cassens, Windom & Cassens Septic Tank Service; Diane McPherson, Nicollet County Environmental Services; Laine Sletta, Brown County Planning and Zoning; Dave Gustafson, University of Minnesota Extension Service and ISTS Advisory Committee; Paula Schroeder, Kandiyohi County Zoning Administrator; and Herbert Wenkel, Blue Earth County.

At the New Ulm public hearing scheduled for 7:00 p.m., 28 persons were present, 10 of whom signed the Rule Hearing Register and four persons provided oral testimony. They included: Charles Balstad, concerned homeowner, Blue Earth County; Charles Enter, Brown County Zoning Administrator; Herman Miller, concerned citizen; and Donald Albrecht, Penn Township Zoning Administrator and ISTS Professional.

At the public hearing in Grand Rapids scheduled for 1:00 p.m., 28 persons were present, 23 of whom signed the Rule Hearing Register and seven persons provided oral testimony. The persons providing oral testimony included: Wayne Anderson, Mariway Land Consultants; Ron Dvoracek, Cass County; Thomas Barthell, Sanitarian, International Falls; Jim Appelman, contractor, St. Louis County; Kay Gysbers, Gysbers Excavating; and Jeff Crosby, Sanitarian, St. Louis County; Dave Gustafson.

At the public hearing in Grand Rapids scheduled for 7:00 p.m., six persons were present, five of whom signed the Rule Hearing Register and four persons provided oral testimony. They included: Keith Johnson, concerned citizen, Hibbing; State Representative Becky Lourey, House District 8B; Dale Schroeder, Environmental Health Director, St. Louis County; and Bob Leibfried, Baseline Company.

Written comments relating to the proposed rules were submitted to the Administrative Law Judge by the following individuals or organizations:

Dr. Roger Machmeier; David Gustafson, University of Minnesota Extension Service; Leonard Thelen, Thelen Excavating; Tony Ruppert; Randy Doron, Hawes Pumping; Loren Hawes, Hawes Pumping; Wayne Johnson, Super Sucker Septic Service; Tom Demarsoni, Tom's Backhoe Service; Joseph Lahr, Joe's Excavating; Roger Rimpby; John Bruender, JR Bruender Construction, Inc.; Mark Hinrichs, Hinrichs Plb & Pump Service; Olmsted County Environmental Commission; Robert Hutchinson, Director, Environmental Services, County of Anoka; Cyndi Spencer, Executive Director, MOSTCA; Ron Okerstrom, President, Fergus Power Pump, Inc.; Christopher Ueland, President, Heartland Chapter of American Society of Home Inspectors; Diane McPherson, Environmental Services Director, Nicollet County; Kay Gysbers, Gysbers Excavating, Inc.; Allan Meadows and Myrna Ahlgren, International Falls, Minnesota; Jeff Peterson, Scott County Environmental Health; Bruce Benson, Zoning Administrator, Carlton County Zoning Office; Otter Tail County Board; Terry Neff, Assistant Zoning Administrator, Aitkin County Environmental Services, Planning and Zoning; Michael Herman, P.E., and David Morissette, P.E., Design Engineers, Office of Technical Support, MnDOT; Herb Wenkel, Blue Earth County; Kate Brigman, LeSueur County Environmental

Services; Dr. James Anderson, University of Minnesota, Chairman of the ISTS Advisory Committee, Donald Albrecht, Penn Township Zoning Administrator, Brownton, Minnesota; David Swenson, Supervisor, Water and Land Management, and John Forrest, Shoreland Administrator, Physical Development, Dakota County; Roger S. Johnson, RS Johnson Soil Testing & Consulting; Keith M. Johnson, Hibbing, Minnesota; Clint Elston, President, Alas Can; John McDonald, P.E., Blue Earth, Minnesota; Terry Greenside, Itasca County Zoning Officer; William Trygstad, P.E., Zenk-Read-Trygstad & Associates; John Ernster, Administrator and Larry Peterson, Engineering Design Supervisor, Bureau of Engineering, MDNR; Richard A. Sigel, County of Lake; Gary L. Englund, P.E., Chief Section of Drinking Water Protection, Minnesota Department of Health; David R. Nelson, Minnesota Pollution Control Agency; Milton R. Bellin, Minnesota Department of Health; and Rochelle Rubin, Minnesota Association of Realtors.

A total of 22 exhibits were made a part of the record at the public hearings. Exhibits 1 through 14 were submitted by the Agency, and Exhibits 15 through 22 were submitted by public commentators.

In addition to the hearings identified above, the Minnesota Onsite Sewage Treatment Contractors Association (also referred to as "MOSTCA") and the University of Minnesota Extension Service hosted three public information meetings in Detroit Lakes, Minnesota on August 21, 1995, in St. Cloud, Minnesota on August 22, 1995 and in Rochester, Minnesota on August 28, 1995. These public information meetings generated numerous comments. Many are contained in Public Exhibit 19.

The record remained open for the submission of written comments for 20 days following the date of the last public hearing or until September 20, 1995. Pursuant to Minn. Stat. § 14.15, subd. 1 (1994), five business days were allowed for the filing of responsive comments. On September 27 1995, the rulemaking record closed for all purposes. The Administrative Law Judge received 42 timely written comments from interested persons during the comment period. The MPCA submitted written comments responding to matters discussed at the hearing in its Post-Hearing Comments and in its Final Response. The MPCA made numerous changes to the rules in response to the oral and written comments received on the rule.

The Commissioner for the Minnesota Pollution Control Agency must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the Commissioner of actions which will correct the defects and the Commissioner may not adopt the rule until the Chief Administrative Law Judge determines that the defects have been corrected. However, in those instances where the Chief Administrative Law

Judge identifies defects which relate to the issues of need or reasonableness, the Commissioner may either adopt the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the Commissioner does not elect to adopt the suggested actions, he must submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment.

If the Commissioner elects to adopt the suggested actions of the Chief Administrative Law Judge and makes no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, then the Commissioner may proceed to adopt the rule and submit it to the Revisor of Statutes for a review of the form. If the Commissioner makes changes in the rule other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, then he shall submit the rule, with the complete record, to the Chief Administrative Law Judge for a review of the changes before adopting it and submitting it to the Revisor of Statutes.

When the Commissioner files the rule with the Secretary of State, he shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Nature of the Proposed Rules and Statutory Authority

1. The proposed rules govern the Individual Sewage Treatment Systems Program (hereinafter "ISTS Program"). Individual sewage treatment systems (hereinafter ISTS) must be built for housing units located in areas outside the boundaries for providing cost-effective sewer service. A report done for the Legislative Water Commission in 1993 indicated that 27 percent or 491,925 of the housing units in Minnesota are not connected to a public sewer. The majority of these unsewered housing units are located in small cities, rural subdivisions and unincorporated areas of the State. In addition, numerous individual sewage treatment systems are used for seasonal cabins, which are concentrated in lakeshore areas.

2. The discharge of inadequately treated sewage to surface and ground waters of the State adversely affects water quality and the public health, safety and general welfare. Failures of ISTS are the result of errors in the location, design, construction and maintenance of the systems. The purpose of these rules is to prevent the improper location, design, installation, use, maintenance and abandonment of individual sewage treatment systems.

3. Minnesota Rules chapter 7080 currently contains minimum standards and criteria for the location, design, installation, use, and maintenance of ISTS. The Agency is revising this chapter to: 1) modify the existing technical standards and criteria, 2) establish requirements for implementing the technical standards and criteria,

3) establish a licensing program for businesses working with ISTS, 4) establish a training and registration program for ISTS professionals, and 5) establish administrative requirements for local units of government, i.e., townships, counties and cities (hereinafter "LUGs") which have adopted ordinances which regulate ISTS.

4. The MPCA has worked closely with ISTS professionals for more than three years to develop the proposed technical rules. Most of the proposed changes to the rule are in response to recommendations from the general public, ISTS professionals and local inspectors. Proposals were brought before the ISTS Advisory Committee for review, comment and refinement. The ISTS Advisory Committee was created under Minn. Rules pt. 7080.0100 to advise the agency on revisions of standards and legislation relating to ISTS.

5. The technical changes proposed in these rules have been presented to hundreds of ISTS professionals at the University of Minnesota/Minnesota Pollution Control Agency training workshops. The Agency has received many valuable comments from these individuals which are reflected in the proposed revisions.

6. In 1994, the Minnesota Legislature adopted 1994 Minn. Law ch. 617, codified as Minn. Stat. §§ 115.55 and 115.56, which required the Agency to adopt rules for an ISTS professional licensing program and the administration of ISTS regulations by townships, cities and counties. To accomplish this task, staff conducted six regional fact-finding meetings in Duluth, Brainerd, Detroit Lakes, Marshall, Rochester and St. Paul, in the winter of 1994. The meetings were with local administrators and ISTS professionals. In follow-up, the Agency held two more meetings with the heads of statewide associations for review and comment on initial concepts. The Agency then brought proposed language to the ISTS Advisory Committee for review and comments.

7. The administrative/licensing rule proposals were also presented to hundreds of ISTS professionals at the University of Minnesota/Minnesota Pollution Control agency workshops and presentations were made to other organizations and associations. Input from these groups was received and considered in the development of these rules.

8. The Judge finds that these rules present the best efforts of the MPCA to craft rules that are implementable on a statewide basis, that are practical and economical,

that mandate the use of reliable standards yet encourage new technologies, and that assure the delivery of ISTS services by professionally licensed businesses or individuals.

9. The Agency has general statutory authority “to prevent, control, or abate water pollution” pursuant to Minn. Stat. § 115.03, subdivision 1(e) and specific statutory authority to adopt individual sewage treatment standards pursuant to Minn. Stat. § 115.55, subd. 3(a), which provides, in part, as follows:

Subd. 3. **Rules.** (a) The agency shall adopt rules containing minimum standards and criteria for the design, location, installation, use, and maintenance of individual sewage treatment systems.

10. The Agency is also specifically authorized under Minn. Stat. § 115.56, subd. 1(a) as follows:

Subdivision 1. **Rules.** (a) Pursuant to section 115.03, subdivision 1, by January 1, 1996, the agency shall adopt rules containing standards of licensure applicable to all individual sewage treatment system professionals.

11. The Judge finds that the Agency has the general and specific statutory authority to adopt these rules.

Procedural Requirements

12. On May 22, 1992, the Agency published a Notice of Solicitation of Outside Opinion regarding the state rules for individual sewage treatment systems published at 16 State Register 2626. On August 22, 1994, the Agency published a Notice of Intent to Adopt Rule Amendments without a Public Hearing relating to individual septic tank systems published at 19 State Register 412. On July 24, 1995, the Agency published a withdrawal of the proposed permanent rules relating to individual sewage treatment systems published at 20 State Register 83.

13. On September 6, 1994, the Agency published a Notice of Solicitation of Outside Opinion at 19 State Register 557 regarding its proposal to adopt rules governing the ISTS program and licensing registration. The Agency issued a second notice on December 19, 1994 at 19 State Register 1375.

14. On June 30, 1995, the Agency filed the following documents with the Chief Administrative Law Judge:

- a. a copy of the proposed rules certified by the Revisor of Statutes;
- b. the proposed Order for Hearing;
- c. the Notice of Hearing proposed to be issued;

- d. the Statement of Need and Reasonableness ("SONAR");
- e. a statement by the Agency of the anticipated duration and attendance at the hearing;
and
- g. a notice of discretionary additional public notice pursuant to Minn. Stat. §14.14, subd. 1a.

15. On July 19, 20, 24 and 25, 1995, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Agency for the purpose of receiving such notice, and all persons to whom additional discretionary notice was given by the Agency.

16. On July 24, 1995, the Agency published the Notice of Hearing and the proposed rules at 20 State Register 93.

17. On August 4, 1995, the Agency filed the following documents with the Administrative Law Judge:

- a. a photocopy of the pages of the State Register containing the Notice of Hearing and the proposed rules;
- b. the Notice of Hearing as mailed;
- c. the Agency's certification that its mailing list was accurate and complete as of July 18, 1995, and the Affidavit of Mailing the Notice to all persons on the Agency's mailing list;
- d. the Affidavit of Mailing the Notice to those persons to whom the Agency gave discretionary notice;
- e. a copy of the Notices of Solicitation of Outside Opinion published on September 6 and December 19, 1994, and all materials that were received in response to the Notice, including summaries of telephone contacts with interested persons; and
- f. the names of Agency personnel who would appear at the hearing.

Impact on Agricultural Land

18. Minn. Stat. § 14.11, subd. 2 requires that if the Agency proposing adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the State, the Agency shall comply with specified additional requirements. The only part of this rule that may affect agricultural lands is the requirement that one additional soil treatment area be available on each lot. This requirement may increase the size of the lots resulting in a potential small increase in

the amount of land taken out of agricultural production. This would only affect those few developments on small lots unable to support two areas of soil treatment systems and is not considered substantial enough to cause adverse impact to agricultural lands.

19. Based on the foregoing, the Agency concluded that the proposed revisions will not have any significant impacts on agricultural lands or farming operations.

Review by Commissioner of Transportation

20. Minn. Stat. § 174.05 requires the Agency to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. The rule amendments do not concern transportation.

Commissioner of Finance Approval of Fee

21. As required by Minn. Stat. § 16A.128, subd. 1, the Commissioner of Finance has approved the fees proposed in this rule. The Commissioner of Finance's approval is attached to the Agency's SONAR as Exhibit 20.

Expenditure of Public Money by Local Public Bodies

22. Minn. Stat. § 14.115, subd. 1 requires the Agency to include in its Notice a statement of the rule's estimated cost to local public bodies if the rule would have a total cost of over \$100,000 to all local public bodies in the state in either of the two years following adoption of the rule. Municipalities are required to adopt the provisions of this rule within shoreland and flood plain areas and wild and scenic river land use districts. Outside of these areas, the rule provides recommended guidelines for the adoption of local ordinances. Should a municipality administer this rule for areas outside of the required areas, the added activities may collectively exceed the \$100,000 threshold. However, this expenditure is not mandated by this rule.

Economic Impact of the Proposed Rules

23. Minn. Stat. § 116.07, subd. 6 requires the MPCA to give due consideration to economic factors in exercising its powers. The major economic impact for the licensing of ISTS business is the cost of complying with the statutory requirements: education, bonding and insurance, and licensing fees. In assessing the impact of the rule, the Agency completed a survey of ISTS businesses. Part 4 of the Statement of Need and Reasonableness contains a detailed explanation of the estimated costs. The Agency anticipates that the proposed rules will have a non-measurable impact on Minnesota's economy. The proposed rules will have minimal impact on the economic climate of the unsewered community and the ISTS construction industry.

Small Business Considerations in Rulemaking

24. Minn. Stat. § 14.115, subd. 4 requires that the Agency include a statement of impact of the proposed rule on small businesses. Two types of small businesses will be affected by the proposed rules. The individual sewage treatment system businesses required by Minn. Stat. § 115.56 to obtain a state license, and the businesses that use individual sewage treatment systems to treat their waste. The businesses required to obtain a state license will be affected by administrative requirements and license fees; however, many of these businesses have had to meet similar local requirements. Businesses not already having to meet local requirements will experience the greatest effect. The estimate average cost of meeting the requirements in the rule, including license fees, is \$634.00 per year. The MPCA has implemented several methods in the rule which mitigate the effects on these businesses. These methods include allowing businesses to obtain a single bond and liability insurance for multiple licenses, and continual efforts to involve these businesses and the rulemaking activities, when possible.

25. In addition, some businesses that use individual sewage treatment systems to treat their waste water may be affected. New technical requirements on the calculation of waste water flow may require additional small businesses to obtain a state permit. The percentage of businesses affected is small, and although the requirement may add cost to some businesses, it will prevent system failures that have in the past required similar businesses to replace systems, costing them great amounts of money.

Reasonableness of the Proposed Rules

26. The Administrative Law Judge must determine, *inter alia*, whether the need for and reasonableness of the proposed rules have been established by the Agency by an affirmative presentation of facts. Minn. Stat. § 14.14, subd. 2. The question of whether a rule is reasonable focuses on whether it has a rational basis. The Minnesota Court of Appeals has held a rule to be reasonable if it is rationally related to the end sought to be achieved by the statute. Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn. App. 1985); Blocher Outdoor Advertising Company v. Minnesota Department of Transportation, 347 N.W.2d 88, 91 (Minn. App. 1984). The Supreme Court of Minnesota has further defined the burden by requiring that the Agency "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). An agency is entitled to make choices between possible standards as long as the choice it makes is rational. If commentators suggest approaches other than that selected by the Agency, it is not the proper role of the Administrative Law Judge to determine which alternative presents the "best" approach.

27. The MPCA prepared a Statement of Need and Reasonableness ("SONAR") in support of adoption of the proposed rules. At the public hearings, the Agency primarily relied upon the SONAR as its affirmative presentation of need and reasonableness for each provision. The SONAR was supplemented by the comments made by the Department at the public hearing and in its written post-hearing comments.

28. The Findings in this Report do not address each part of the proposed rules, rather the Findings primarily address those parts that received significant public commentary or for which changes have been made since publication in the State Register. After careful review and consideration of the Agency's Statement of Need and Reasonableness and based upon the Agency's oral presentation at the hearing and comments submitted after the hearing, the Administrative Law Judge finds that the Agency has affirmatively established the need and reasonableness of each part of the proposed rule except as otherwise qualified or determined by the following Findings and Conclusions.

29. Where changes are made to the rule after publication in the State Register, the Administrative Law Judge must determine if the new language constitutes a substantial change from that which was originally proposed. Minn. Rule pt. 1400.1100, subp. 2 provides as follows:

In determining whether a proposed final rule or rule as adopted is substantially different, the Administrative Law Judge or the Chief Administrative Law Judge shall consider the extent to which it affects classes of persons who could not have reasonably been expected to comment on the proposed rules at the rulemaking hearing, or goes to a new subject matter of significant substantive effect, or makes a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing, or results in a rule fundamentally different in effect from that contained in the Notice of Hearing.

30. After the proposed rules were published in the State Register, the MPCA made numerous changes to the proposed rule. These changes were for clarification and correction of errors and in response to comments made on the proposed rule at the public hearings and in written comments. The Judge has carefully considered all comments, including those not specifically mentioned in this Report. Except as otherwise stated in this Report, the Judge hereby finds the changes proposed by the Agency are reasonable, consistent with the Agency's authority and do not constitute substantial changes.

31. The Agency submitted Exhibit 14 at the public hearings. Exhibit 14 contains 56 changes to the proposed rules. These changes generally involve grammatical corrections, clarifications and other minor corrections. None of the changes in Exhibit 14 was objected to by any participant at the hearings, and the Exhibit did not generate any written comments. Exhibit 14 is incorporated into this Report. Except as otherwise stated in this Report, the changes proposed in Exhibit 14 are reasonable and do not constitute substantial changes.

ANALYSIS OF RULE PARTS GENERATING SIGNIFICANT PUBLIC COMMENTARY OR FOR WHICH CHANGES HAVE BEEN PROPOSED.

Title of Rule

32. The rule is titled “Proposed Permanent Rules Relating to Individual Septic Tank Systems”. A number of commentators including Clint Elston and Gary Englund have suggested that the title is too narrow. For example, Mr. Englund states that the rule regulates holding tanks, aerobic tanks, soil treatment systems, privies, and other sewage treatment systems. A broader title would better reflect the scope of the rule.

33. The Agency agreed with the commentators and indicated that the correct title for these rules is the title that is on the Agency’s SONAR. The appropriate title for these rules is “Proposed Permanent Rules Relating to Individual Sewage Treatment Systems Program, Minn. Rules Chapter 7080”.

34. This clarification is reasonable and does not constitute a substantial change.

7080.0010 Purpose and Intent

35. The Minnesota Department of Transportation and the Minnesota Department of Health suggested that the Agency clarify the authority of Chapter 7080 in relation to the Federal Underground Injection Control Program.

36. The Agency agreed with the commentators that the proposed language is confusing and proposed the following:

This chapter does not address systems treating industrial or animal waste or wastewater that may contain hazardous materials. Industrial wastewater treatment systems receiving nonhazardous wastes are regulated by the United States Environmental Protection Agency as Class V injection wells under Code of Federal Regulations, title 40, part 144. These federal regulations along with this chapter also cover individual sewage treatment systems serving more than 20 persons. It is the

37. The Judge finds that the proposed change is a clarification that does not constitute a substantial change.

38. Roger S. Johnson proposed the following rule change: The first sentence should be amended as follows:

The improper location, design, installation, use and maintenance of individual sewage treatment systems adversely affects the public

health, safety, and general welfare by discharge of inadequately treated sewage to the ground surface, surface waters and ground waters.

The Agency agreed with Mr. Johnson and proposed the change. MPCA indicated that the change encompasses all potential discharges of inadequately treated sewage.

39. The proposed change is reasonable and does not constitute a substantial change.

7080.0020 subp. 3a - Definition of Alternative Standards

40. A proposal arising from the MOSTCA hearing held in Detroit Lakes recommended that the Agency add a provision that a LUG could not prohibit land application of septage.

41. The MPCA responded stating that it was not prepared to add this provision for the following reasons. First this provision needs to be in the body of the rule, not in the definitions. Second, if this provision is to be pursued further, it should be discussed at length with LUG's and pumpers so a fair compromise can be reached. Third, a better method is to develop septage rules so the LUG knows what practices are allowed and what practices are not allowed. Fourth, the Agency believed that this would be a substantial change to the rule and may require statutory authority.

42. The MPCA's decision not to change this provision is a reasonable and appropriate exercise of the Agency's discretion.

7080.0020, subp. 4a. Definition of Applicable Requirements.

43. The Agency proposed that this definition be changed to correct an error in the rule. The definition would be changed by inserting "that comply with this chapter" after "ordinance" on line 2.

44. The MPCA explained that Minn. Stat. § 115.55, subdivision 1 defines applicable requirements by including the above inserted terms. This change is necessary to assure compliance with the statute and to assure LUGs understand the yardstick by which licensees and qualified employees will be measured. Applicable requirements that comply with this chapter means local ordinances which are equivalent to ch. 7080, include more restrictive standards, or include alternative standards and which meet the submittal and adoption requirements in accordance with part 7080.0305.

45. The proposed change is reasonable and does not constitute a substantial change.

7080.0020 subp. 7 - Definition of Bedroom.

46. Kate Brigman of the LeSueur County Environmental Services proposed that the MPCA change this definition to include as a bedroom, unfinished areas with egress windows or closet areas.

47. The MPCA responded stating that it basically agreed that more guidance could be given when determining the number of bedrooms in relation to unfinished areas. However, the Agency wanted to study the issue more before making a determination. Therefore, the Agency proposed no changes at this time.

48. The MPCA's decision not to adopt this proposal is a reasonable and appropriate exercise of its authority.

7080.0020, subp. 9a. Business.

49. David Gustafson, University of Minnesota, suggested that the Agency add "repair" to the list of activities that could be performed by an ISTS business. The Agency agreed and proposed as follows:

Subp. 9.a. Business. "Business" means an individual or organization that designs, installs, maintains, repairs, pumps, or inspects an individual sewage treatment system.

50. The Agency explained that the terms repair and maintain are often used interchangeably and can cause confusion. The proposed rules identify "maintain" as the term for pumping because it is more aesthetically pleasing. Although not defined, the Agency interprets statutory use of the term "maintain" to mean other activities as well (such as repairing appurtenances or recovering soil systems). The MCPA concluded that it is reasonable to include both terms, "repair" and "maintain", to avoid confusion with ISTS professionals.

51. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 11 - Definition of Clean Sand

52. This part proposes to change the definition of "clean sand". Dr. James L. Anderson, University of Minnesota, proposed that the definition of clean sand should remain unchanged.

53. The MPCA responded stating that the Agency is not eliminating the current standard but only trying to highlight or identify a industry standard, which exceeds the current specification. The Agency has provided technical assistance to individuals concerning mound failures due to poor quality sand. In many cases the mound sand just barely failed the current mound sand criteria. Therefore, it is the Agency's position that the current specification is adequate, but it has little or no safety factor. Therefore, the addition of these well known specifications may educate and encourage installers to use these better specifications without mandating that they do. Therefore the Agency proposed no changes to the proposed rule.

54. The MPCA's decision not to adopt this proposal is a reasonable and appropriate exercise of its authority.

7080.0020, subp. 11d. Definition of Compliance Inspection.

55. The Agency proposed a change to this subpart to make it clear when an ISTS evaluation is deemed a compliance inspection, thereby requiring compliance with this chapter. The change rendered obsolete the change proposed in Exhibit 14. The Agency also incorporated a suggestion by David Gustafson. The change proposed is as follows:

Subp. 11d. Compliance inspection. "Compliance inspection" means any evaluation, investigation, inspection, or other such process to make conclusions, recommendations or statements regarding an individual sewage treatment system by conducting site investigations, gathering and reviewing information, or conducting tests to reasonably assure an individual sewage treatment system is in compliance as specified under part 7080.0060. Compliance inspections must be conducted by a qualified employee or under a license independent of the owner and the installer.

56. The Agency explained that the proposed change is made for clarity. Minn. Stat. § 115 requires the proposed rules to include permit and inspection requirements. The MPCA's intent is to promote systematic and consistent ISTS inspections regardless of the terminology used to describe inspection. Although this requirement is stated within the compliance inspection sections of parts 7080.0315, subpart 2 and 7080.0350, subpart 2, Mr. Gustafson's change is made to assure anyone conducting a compliance inspection, for any reason, must be a qualified employee or a licensee independent of the owner and installer. Existing system compliance inspections in parts 7080.0315 and 7080.0350 are required for bedroom or bathroom additions; it could be confusing what the qualifications are for persons conducting inspections for other triggers, such as property transfer or complaint.

57. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 11e. - Definition of Conforming.

58. The Agency proposed a repeal of this definition because a definition is provided in the shoreland management act and is not used in this rule. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 16a. Failing System.

59. The MPCA proposes to change the definition of “failing system” to read as follows:

“Failing system” means any system that discharges ~~untreated or partially treated~~ sewage to a seepage pit, cesspool, drywell, or leaching pit; and any system with less than three feet of soil or sand between the system bottom and the saturated soil level or bedrock; and any system causing sewage backup into a dwelling or other establishment. In addition any system posing an imminent threat to public health or safety as defined in subpart 19a shall be considered failing. Upgrade requirements for these systems are found under parts 7080.0060, subparts 3 and 4, and 7080.0315 or 7080.0350.”

60. The Agency gave the following reasons for the change:

Ground and surface water discharges were moved from the definition of “failing system” as certified by the Revisor of Statutes on July 6, 1995 to the “imminent threat to public health or safety” definition in subpart 19a. Subpart 19a contained the language for a surface discharge, it was not clear whether this meant ground and/or water surface so this change is made for clarity. The ground and surface water discharge requirements were removed from the failing definition to prevent confusion regarding upgrade time periods (failing has no state-mandated upgrade time; imminent threat has up to 10 months). The groundwater discharge requirement was removed because it is redundant with the three foot requirement and confusing to inspectors attempting to verify compliance. Imminent threat to public health or safety is added to the definition of failing to assure that shoreland and non-shoreland areas are consistently reviewed. The Shoreland Management Act relies on the agency’s definition of failing for upgrade requirements. In the past, failing has included surface discharges.

To assure this criteria is still used in Shoreland areas when the proposed change moves the criteria to imminent threat, it is necessary to identify that imminent threats are considered failures. Upgrade requirements are identified because imminent health threat upgrades are different (within 10 months) than failing upgrade requirements (per local ordinance).

Post-Hearing Comments, p. 4.

61. Terry Neff, Aitkin County Environmental Services, proposed that the Agency clarify where the separation distance to watertable or bedrock is measured from for soil treatment systems by inserting the words "distribution medium bottoms". The Agency agreed and proposed the following change:

"Failing system" means any system that discharges sewage to a seepage pit, cesspool, drywell, or leaching pit; and any system with less than three feet of soil or sand between the ~~system~~ bottom of the distribution medium and the saturated soil level or bedrock. In addition any system posing an imminent threat to public health or safety as defined in subpart 19a shall be considered failing. Upgrade requirements for these systems are found under parts 7080.0060, subparts 3 and 4, and 7080.0315 or 7080.0350.

62. The proposed change is reasonable and does not constitute a substantial change.

7080.0020 subpart 17c (new)

63. David Swenson and John Forrest, Dakota County Environmental Mgt. Services, recommended that the Agency provide a definition of greywater and blackwater. The Agency agreed that a definition for greywater would be beneficial, however, a definition of blackwater was unnecessary because the term blackwater is not used in the rule. The Agency proposed the following:

Greywater. "Greywater" is sewage that does not contain toilet wastes.

64. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 19a. Imminent Threat to Public Health or Safety.

65. At the public hearing in Grand Rapids, Dave Gustafson proposed that "adversely impacted wells" should be deleted from the definition of imminent health

threat. MPCA agreed and proposes to change the definition for “imminent threat to public health or safety” to read:

“Imminent threat” to public health or safety means situations with the potential to immediately and adversely impact or threaten public health or safety. At a minimum, ground surface or surface water discharges or adversely impacted wells and any system causing sewage backup into a dwelling or other establishment shall constitute an imminent threat.”

66. The Agency explained that the change is necessary because the current rule requirement is not implementable in the field. Persons conducting compliance inspections are now required to verify that an imminent threat to public health or safety is not present. To determine if wells are adversely impacted would require persons to be trained in groundwater monitoring and sampling. Also, it is not clear what constitutes “adversely impacted” nor is it clear who’s well must be tested (ISTS owner or neighboring wells).

67. The proposed change is reasonable and does not constitute a substantial change.

Subp. 19c. Definition of ISTS Professional.

68. ISTS professional is discussed both in this definition and under part 7080.0300, subpart 1. The language is intended to be the same, but it is currently different in the proposed rules. To correct this error, the Agency proposes that this subpart should be changed as follows:

...or inspect systems as set forth in this chapter all or part of an individual sewage treatment system, shall comply with applicable requirements.

69. This change mirrors Minn. Stat. § 115.55, subd. 4 (a). It is reasonable and does not constitute a substantial change.

70. Roger S. Johnson observed that Part 7080.0300, subpart 1, ISTS professional, does not clearly include site evaluation. In response to this comment, the MPCA proposes to make the suggested rule change as a clarification. The Agency proposes as follows:

ISTS professionals. A person who conducts site evaluation, designs...

71. The proposed change is reasonable and does not constitute a substantial change.

7080.002, subp. 22c. - Definition of Local Ordinance.

72. The Agency proposes to change this definition by inserting “that complies with this chapter” after “ordinance” on line 14. The Agency proposed this change for the same reason as for the proposed change to part 7080.0020, subpart 4a.

73. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 24b.

74. Gary Englund suggested a definition is necessary for curtain drain. The Agency responded by proposing that the term “curtain drain” be removed from the rule. The Agency proposes to replace all terms “curtain drain” with “artificial drainage” throughout the rule. The terms artificial drainage are used in part 7080.0910 and unchanged from the 1989 version of the rules.

75. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 24c. - Definition of Nonconforming.

76. The Agency proposes to repeal this definition because the definition is provided in the shoreland management act and is not used in this rule.

77. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 24e. - Definition of Ordinary High Water Level.

78. Gary Englund, Minnesota Department of Health, recommended that the definition of ordinary high water level should reference the statutory definition. The Agency agreed with the commentator and proposed the following:

Subp. 24e. Ordinary high water level. "Ordinary high water level" is defined as found in Minnesota Statutes 103G.005 subdivision 14. ~~means the boundary of public waters and wetlands, that is an elevation delineating the highest water level maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the~~

~~top of the bank of a channel. For reservoirs and flowages the ordinary high water level must be the operating elevation of the normal summer pool.~~

79. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 28a (new). - Definition of Privy.

80. Scott County Environmental Health Services recommended that a definition of a privy be added. The Agency agreed and proposed the following definition:

Privy. "Privy" means an above ground structure with an underground cavity meeting the requirements of 7080.0910 subpart 3 F which is used for the storage or treatment and disposal of toilet wastes, specifically excluding water for flushing and greywater.

81. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 33. - Definition of Sewage.

82. Jeff Peterson, Scott County Environmental Health, recommended that a clarification is needed on classification of chemically treated hot tub or pool water. The Agency agreed that the classification is confusing due to punctuation. The Agency proposed the following:

Subp. 33. **Sewage.** "Sewage" means any water-carried domestic waste, exclusive of footing and roof drainage ; (revisor, remove comma) and chemically treated hot tub or pool water, from any industrial, agricultural, or commercial establishment, or any dwelling or any other structure. Domestic waste includes liquid waste produced by toilets, bathing, laundry, culinary operations, and the floor drains associated with these sources. Animal waste and commercial or industrial waste are not considered domestic waste.

83. The proposed change is reasonable and does not constitute a substantial change.

7080. 0020, subp. 45 and 45b. - Definition of Standard System.

84. Numerous commentators, including Dr. James L. Anderson, Jeff Peterson, Dave Gustafson, Michael Herman, Terry Neff and Robert Huehnson, observed that the

rule has two definitions for a “standard system”. The Agency noted that the definitions were different due to moving sections in the rule. To correct this error, the Agency proposes to strike definition 45b.

~~Subp. 45b. Standard system. "Standard system" means an individual sewage treatment system built in compliance with parts 7080.0600 to 7080.0910.~~

85. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 45. - Definition of Soil Treatment System.

86. Dr. Roger Machmeier recommended that the Agency clarify the definition by inserting “through” and removing “to” in this subpart. The Agency agreed with the commentator and proposes the following:

Standard system. "Standard system" means an individual sewage treatment system specified in parts 7080.0125 ~~to~~ through 7080.0170.

87. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 46a.

88. Jeff Peterson recommended the use of the word “through” rather than “to” to assure it is clear to the reader whether 7080.0060 to 7080.0176 is inclusive or exclusive of 7080.0176. The Agency agreed and proposes to change “to” to “through” for this and similar circumstances throughout the rule.

89. The proposed change is reasonable and does not constitute a substantial change.

7080.0020, subp. 48. - Definition of Toilet Waste.

90. After hearing the testimony of Clint Elston at the St. Paul hearing, the Agency proposed to change this definition by adding the sentence “Alternative or experimental systems may allow the disposal of sanitary napkins, tampons and disposable diapers if the technology specifically addresses the treatment and disposal of these types of solid waste.” after the previous sentence ends on line 14. The Agency concurs with Mr. Elston. Technologies capable of treating solid waste such as sanitary napkins, tampons and disposable diapers should be allowed to receive such waste.

91. The proposed change is reasonable and does not constitute a substantial change.

7080.0025 ADVISORY COMMITTEE.
Subp. 3. Membership.
Item C.

92. Robert Hutchinson indicated that sanitarians are typically called Environmental Health Specialists and should be identified as such in the rule. The Agency concurred and proposed that Item C be changed as follows:

C. six shall be county administrators, such as zoning administrators, and sanitarians, and environmental health specialists, one from each of the five agency regions and one from the seven-county metropolitan area;

The Agency explained that the rule includes both sanitarians and Environmental Health Specialists as examples of county administrators who meet the requirements of a county administrator for Advisory Committee membership. Both terms are used since both are still used in the state.

93. The proposed change is reasonable and does not constitute a substantial change.

7080.0025, subp. 4. - Ex officio members.

94. Christopher Ueland recommended that the American Society of Home Inspectors be included as an ex officio member of the ISTS Advisory Committee. Cyndi Spencer requests that the Minnesota On-Site Sewage Treatment Contractor's Association (MOSTCA) be added to the advisory committee as an ex-officio member.

95. The Agency agreed that input from the American Society of Home Inspectors would be valuable in making decisions at the ISTS Advisory Committee meetings. Their input would complement input received from inspectors who work for local units of government who mainly conduct inspections of new systems. MOSTCA is an active group of industry representatives that should, as an association, be included in the informational mailings and invitations to the meetings. MOSTCA is attempting to modify its structure to provide a better regional representation. The regional participation in the advisory will also help to address concerns that the committee lacks participation of ISTS professionals from outside the Twin Cities metro.

96. The Agency proposed the following language:

Subp. 4. **Ex officio members.** The following agencies and associations shall each have one nonvoting ex officio member to assist the advisory committee and to be advised, in turn, on matters relating to ISTS: the agency, Department of Natural Resources, Minnesota Department of Health, United States Department of Agriculture Soil Conservation Service, Metropolitan Council, Association of Minnesota Counties, Minnesota Association of Townships, League of Minnesota Cities, Minnesota Society of Engineers, Association of Small Cities, Minnesota Association of Campground Operators, Inc., Minnesota Association of Realtors, Minnesota County Recorders' Association, ~~and~~ Minnesota Environmental Health Association, Minnesota On-Site Sewage Treatment Contractor's Association and The American Society of Home Inspectors.

97. The proposed change is reasonable and does not constitute a substantial change.

7080.0025, subp. 5 and 6.

98. Subparts 5 and 6 were not included in the published rule. The Agency indicated that subparts 5 and 6 should still remain in Chapter 7080. These subparts were inadvertently dropped during the rule writing efforts. There is no intention to repeal or delete these subparts. These subparts currently read:

Subp. 5. **Appointment; terms.** All members shall be appointed by the agency board from recommendations by the affected groups. All members shall serve for four years, with terms staggered so as to maintain continuity. In the case of a vacancy, an appointment shall be made for the unexpired balance of the term. The administrators, inspectors, and contractors shall have been bona fide residents of this state for a period of at least three years before appointment, and shall have had at least three years' experience in their respective businesses.

Subp. 6. **Robert's rules.** Robert's Rules of Order shall prevail at all meetings of the advisory committee.

99. To correct this error of omission, subparts 5 and 6 are being added. The language is quoted directly from the 1989 version of this chapter. Correcting this error of omission does not constitute a substantial change.

7080.0030 ADMINISTRATION BY STATE AGENCIES; SDS AND NPDES PERMIT REQUIREMENTS

7080.0030 subp. 2. B. - Application for SDS Permit.

100. Dr. James L. Anderson and Dave Gustafson proposed that the site evaluation requirements in this part be consistent with those under 7080.0110. This would standardize procedures for all types and sizes of soil treatment systems.

101. The Agency responded stating that a more detailed investigation is needed when dealing with larger flows. Therefore, a more detailed soil description is necessary to predict hydraulic performance. Other items which may need describing, which are not contained in 7080.0110 are such things as soil structure, boundary conditions between horizons, the presence or absence of roots, parent material, and others. However the rule should be clear that the requirements of .0110 should also be followed. Therefore, the Agency amends the proposed language as follows:

B. a site evaluation which includes detailed soil descriptions in accordance with 7080.0110 and with any additional methods as specified in the Soil Survey Manual, Agricultural Handbook No. 18 (October 1993), which is incorporated by reference. The manual is issued by the United States Department of Agriculture and is available through the Superintendent of Documents, United States Government Printing Office, Washington, D.C. It can be found at the Minnesota State Law Library, Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, and is not subject to frequent change;

102. The proposed change is reasonable and does not constitute a substantial change.

Subp. 4. Administration by All State Agencies.

103. Subpart 4 states as follows:

Individual sewage treatment systems serving establishments for facilities licensed or otherwise regulated by Minnesota shall conform to the requirements of this chapter. Any individual sewage treatment systems requiring approval by the State shall also comply with all local codes and ordinances. Plans and specifications must receive the appropriate state and local approval before construction is initiated.

104. The Minnesota Department of Transportation (MNDOT) and Minnesota Department of Natural Resources (MDNR) assert that this provision inappropriately subjects them to local codes and ordinances. They assert that unless the MPCA has

received explicit legislative authority to do so, local codes and ordinances cannot be imposed upon a State agency. They further assert that the sentence on lines 29-31, "Any individual sewage treatment systems requiring approval by the state shall also comply with all local codes and ordinances," goes too far, that at most the rule could pertain only to ordinances directly concerning ISTS.

105. In response to the MNDOT and MDNR filings, the Agency reviewed its statutory authority and the case law cited by the State agencies. Based upon that review, the MPCA concluded that State agencies must comply with local codes and ordinances in certain situations.

106. Minn. Stat. § 115.55, subd. 4(a) provides that: "A person who designs, installs, alters, repairs, maintains, pumps, or inspects all or part of an individual sewage treatment system shall comply with the applicable requirements." "Applicable requirements" is defined in Minn. Stat. § 115.55, subd. 1(c) to mean: "(1) local ordinances that comply with the [ISTS] rules, as required in subdivision 2; or (2) in areas not subject to the ordinances described in clause (1), the [ISTS] rules." Further, Minn. Stat. § 115.56, subd. 2(a) provides that: "Except as provided in paragraph (b), after March 31, 1996, a person may not design, install, maintain, pump, or inspect an individual sewage treatment system without a license issued by the commissioner." Those two statutory provisions make the two basic parts of the proposed rules, technical standards and licensing applicable to all "persons." "Person" is defined in the statute in Minn. Stat. sec. 115.01, subd. 10. "'Person' means the state or any agency or institution thereof," Based on this analysis, the Agency concluded that the legislature intended that State agencies who perform the listed acts regarding ISTS must (1) "comply with the applicable requirements", and (2) obtain "a license issued by the commissioner" first.

107. The Agency proposes a change to accommodate one concern expressed, i.e., that the reference at page 18, line 31, to "all local codes and ordinances" may go too far. The MPCA proposes to replace "all" with "applicable." The MPCA explained that it intends that this statement relate to compliance with ISTS local codes and ordinances only.

108. The Judge finds that the Agency has correctly determined that State agencies may be subject to local ISTS ordinances. The proposed change in this subpart is reasonable and does not constitute a substantial change.

7080.0065, Item A - Prohibitions.

109. Gary Englund, Minnesota Department of Health, recommended that the rule refer to a more exact definition of well for consistency with MDH rules. The Agency agreed with the change and proposes the following:

A. Sewage, sewage tank effluent, or seepage from a soil treatment system shall not be discharged into any well or boring as defined in Minnesota Rules Chapter 4725 or any other excavation in the ground not in compliance with this chapter.

110. The proposed change is reasonable and does not constitute a substantial change.

7080.0065, item B - Prohibitions.

111. Jeff Peterson, Scott County Environmental Health, proposed that the rule prohibit the discharge of chemically treated hot tub and pool water into an ISTS. The Agency agreed with the commentator concerning hot tub and swimming pool water and proposes the following:

B. Footing or roof drainage and chemically treated hot tub and pool water shall not enter any part of a system. Products containing hazardous materials must not be discharged to a system other than in normal amounts of household products and cleaners designed for household use. Substances not intended for use in household cleaning including solvents, pesticides, flammables, photo finishing chemicals, and dry cleaning chemicals must not be discharged to the system.

112. The proposed change is reasonable and does not constitute a substantial change.

7080.0110 SITE EVALUATION
subp. 2a. E. - Floodplain areas

113. Robert Hutchinson, County of Anoka, explained that this requirement was unreasonable because the ten-year flood elevation is not data that is published or available for most locations. The Agency responded to the potential unavailability of this data by proposing the following change:

E. ten-year flood plain designation and flooding elevation from published data as available or from data which is acceptable to and ~~the~~ approved by the permitting authority or the DNR.

114. The proposed change is reasonable and does not constitute a substantial change.

7080.0110, subp. 4 C, Item C. - Soil observation.

115. The proposed rule prohibits the use of flite augers because they disturb the natural soil structure and mix colors. Roger Johnson requested that he be allowed to continue using a flite auger which he asserts is continuous and provides minimal disturbance. Dr. James Anderson supported the rule as proposed.

116. The Agency responded proposing the following change: “Flite augers which are noncontinuous or disturb extracted soil samples are not allowable for soil observation”. The Agency explained that flite augers typically extract smeared and disturbed soil samples which cannot effectively be used for determining mottling, compacted or disturbed soils as required in part 7080.0110. The Agency proposes to add the above inserted language to make it clear that flite augers can still pose a problem; however, if they are designed to be a continuous sample that remains undisturbed, they will be allowed.

117. David Swenson and John Forrest, Dakota County Environmental Mgt., and Roger Johnson recommended that the professional judgment of the site evaluator should determine the means and methods to extract soil cores. The Agency agreed with commentators and proposes the following language:

C. soil observations. The number of soil observations required is based on the professional judgment of the Designer or the permitting authority ~~the smallest number necessary to adequately characterize the site~~ with a minimum of one observation per site. Soil observations shall be performed in an exposed pit, or by hand auguring, or probing. Underground utilities must be located before soil observations are undertaken. Required safety precautions must be taken before entering soil pits. Flite augers which are non-continuous or disturb extracted soil samples are not allowable for soil observation. Soil observations shall be conducted prior to any required percolation tests to determine whether the soils are suitable to warrant percolation tests and, if suitable, at what depths percolation tests shall be conducted. The depth of the soil boring shall be to the seasonally saturated layer, bedrock, or three feet below the proposed depth of the system, whichever is less;

118. The proposed changes to Item C are reasonable and do not constitute a substantial change.

7080.0110 subp. 4. F. - Field evaluation.

119. Terry Neff, Aitkin County Environmental Services, recommended that the rule state that the protection of the proposed soil treatment area is not the responsibility of the ISTS professional.

120. In its response, the Agency indicated that the language was meant to make the Designer responsible for initial protection of the site. However, the Agency concluded that the commentator raises a valid point about whether the Designer is responsible for continued protection of the site. To clarify this point, the Agency proposes the following language:

~~F. the suitable soil treatment system area and absorption areas shall be protected from compaction and disturbance.~~

F. the Designer shall provide a means of protection from compaction and disturbance for the proposed area for soil treatment system.

121. The proposed change is reasonable and does not constitute a substantial change.

7080.0110, subp. 5a H. - Site evaluation reporting.

122. David Gustafson recommended that the site evaluator/designer designation should be updated to the current designations of a Designer I or a Designer II. The Agency agreed and proposes the following:

~~H. name, address, telephone number, and signature of the site evaluator/designer.~~ Designer.

123. The proposed change is reasonable and does not constitute a substantial change.

7080.0110, subp. 6 - Additional soil treatment areas.

124. Dr. James L. Anderson recommended that the requirement that an additional soil treatment area be evaluated be removed from this section. MPCA responded indicating that this is existing language which is currently located end of 7080.0110. The ISTS committee discussed this in great length and agreed to the language as proposed. They also instructed the Agency to place this provision where it would be appropriate. The Agency decided to keep the language in the same location as the current rule. This decision was made before the inclusion of administrative requirements for LUG's. The Agency indicated that it could see advantages of keeping the language in the same location and can see advantages of moving the language to the new administrative section. After consideration, the Agency proposes the following:

~~7080.0110 - Site evaluation~~

~~Subp. 6. Additional soil treatment areas. If a suitable additional soil treatment area is available, it must be identified in the site evaluation.~~

7080.0300 General Subp. 2.

Additional soil treatment area. Lots created after the effective date of this chapter shall have a minimum of one additional soil treatment area which can support a standard soil treatment system. If a suitable additional soil treatment area is available on lots created before the effective date of this chapter it must be identified in the site evaluation.

125. The proposed change is reasonable and does not constitute a substantial change.

7080.0120 - Building Sewers.

126. Gary Englund, Minnesota Department of Health, recommended that the requirements for building sewers and supply pipes be mandated in areas not governed by the Plumbing Code. Mr. Englund explained that the Minnesota Building Code and the Minnesota Plumbing Code do not apply to all ISTS installations, particularly to properties with private wells and sewers in counties that have not adopted the Building or Plumbing Code. He further stated that improper piping materials can collapse or break, resulting in failure of the system, leakage of sewage, sewage back-up into a dwelling, or contamination of surface water and groundwater. Mr. Englund recommended that the rules require building sewers and system piping to be plastic or cast-iron pipe meeting the material, installation, and testing requirements of the Minnesota Plumbing Code. Adoption of this standard will result in considerably less system failure, consistent state-wide material standards, and simplification of well and sewage system siting.

127. The Agency agreed and proposes the following language:

The design, construction, and location of, and the materials for use in building sewers shall be in accordance with are governed by the Minnesota State Building Code, chapter 1300, which incorporates by reference portions of the Minnesota Plumbing Code, chapter 4715, and specific provisions of the Minnesota rules relating to wells and borings, chapter 4725.

The Judge notes that the words "are governed by" must also be excluded so that the change is understood. (Change also needed for 7080.0020 subpart 45c as follows):

Supply pipe. "Supply pipe" means any non-perforated pipe whose purpose is the transport of sewage tank effluent. Supply pipes must meet or exceed the requirements for building sewers as described in 7080.0120.

128. The proposed changes are reasonable and do not constitute a substantial change.

7080.0125, subp. 4 - Sewage Flow Determination.

129. Gary Englund indicated, after reading this subpart, that it was unclear if a water meter is required in addition to an electrical event counter for systems that have sewage tank effluent pumped to a soil treatment system, or if only an electrical event counter is sufficient. Dr. Roger Machmeier indicated that a water meter, together with an electrical event counter, if the effluent is pumped, should be required for every onsite sewage treatment system. Dr. Machmeier explained that the success or failure of the performance of an onsite sewage treatment system so often depends on the amount of water used and waste water discharged to the system. A meter is an inexpensive but necessary part of any onsite sewage treatment system. In the proposed change, the word "also" should be inserted on line 27. The Agency agreed that a clarification was necessary and adopted the recommendation of Dr. Machmeier. The Agency proposes the following change:

Subp. 4. Water meter. An individual sewage treatment system that serves other establishments must not be installed unless a water meter is provided to measure the flow to the treatment system. For metered systems that have sewage tank effluent pumped to a soil treatment system, an electrical event counter or other method of flow measuring must also be employed.

130. The proposed change is reasonable and does not constitute a substantial change.

7080.0130, Sewage Tanks (General Comment).

131. John Bruender recommended that the Agency change the term "manhole" to "Septic Tank Cleaning Access".

132. The Agency agreed with Mr. Bruender and proposes to replace the term "manhole" with "septic tank cleaning access". The word "manhole" is repeated throughout the rule. The Judge recommends that "manhole" be replaced everywhere it appears in the rule. The Judge also believes that "septic tank cleaning access" sounds awkward and probably is inaccurate since access to the septic may be for reasons other than cleaning. The Judge encourages the Agency to consider a less awkward, shorter

term such as “tank access”. Regardless of the decision the Agency makes, replacing the word “manhole” with another term does not constitute a substantial change.

7080.0130, subp. 1 F - Sewage Tanks.

133. Diane McPherson, Nicollet County Environmental Services, and Jeff Peterson, Scott County Environmental Health, recommended that the Agency clarify if precast tanks can be placed in soils which have saturated soil conditions closer than three inches to the bottom of the excavation.

134. The Agency responded indicating that the proposed language is not meant to prohibit the setting of precast tanks in areas with saturated soils. To clarify the language the Agency proposes the following:

F. not be constructed onsite when saturated soil conditions during construction are closer than three inches to the bottom of the excavation;

135. The proposed change is reasonable and does not constitute a substantial change.

7080.0130 SEWAGE TANKS. Subp. 2. Design of septic tanks.

136. In its Post-Hearing Comments, the Agency states that the stricken words “items G and” on page 30, line 22 should not be stricken. The MPCA explained that this is an incorrect reference. Items G and H must be referenced to assure specifications are identified for both the outlet and inlet baffles.

137. The Agency proposes to delete the first sentence beginning on line 17 and ending on line 19. As a basis for this change, the Agency gave the following reasons: 1.) Currently, the Agency is not aware of any problems caused by compartmented tanks having holes at the same elevation. 2.) The ASTM standard for septic tanks indicates that hole placement between compartments is not critical. 3.) The Agency promotes shallow soil treatment systems which are three feet above the water table or bedrock. Therefore, if multiple drops in the tank are required, the outlet elevation may become too deep to maintain the required separation distance.

138. The proposed changes in subpart 2 are reasonable and do not constitute substantial changes.

Subp. 3. Liquid capacity of septic tanks.
Item B. Other Establishments.

139. Mr. Hutchinson indicated that the language in this Item was incomplete. The Agency agreed and proposed a rule change as follows:

B. Other establishments. The liquid capacity of septic tanks serving other establishments shall use ~~using~~ the method in subitem (1), (2) or (3).

140. The proposed change is reasonable and does not constitute a substantial change.

7080.0130, subp. 3 B (3) - Liquid Capacity of Septic Tanks.

141. Terry Neff, Aitkin County Environmental Services, indicated that clarification is needed on which baffles need to be 50% of the liquid depth of tanks which serve Laundromats. The Agency agreed and proposes the following change:

(3) For restaurants and Laundromats, sufficient detention time or pretreatment must be provided to produce an effluent quality suitable for discharge to a soil treatment system. For Laundromats the outlet baffle of a all septic tanks and baffles between compartments must be submerged to a depth of 50 percent of the liquid depth of the tank.

142. The proposed change is reasonable and does not constitute a substantial change.

7080.0130, subp. 6 D - Aerobic Tanks.

143. This subpart refers to maintenance of an aerobic sewage tank. Gary Englund asked the question, if there is no local permitting authority that reviews these contracts, to whom does the responsibility for the review of these contracts go? Mr. Englund also indicated that it should be clarified if a certified operator is required to maintain the operation of the aerobic sewage tank.

144. The Agency responded indicating that Mr. Englund's comments called into question the responsibility for service contracts in non-ordinanced areas and who is qualified to operate the system. The Agency stated that Mr. Englund's comments indicate the need for statewide adoption of chapter 7080.

145. In response to Mr. Englund, the Agency proposes the following language, recognizing that enforcement may be limited:

D. An effective maintenance service contract acceptable to the permitting authority shall be maintained at all times, if applicable, the maintenance service contract must be acceptable to the permitting authority.

146. The proposed change is reasonable and does not constitute a substantial change.

7080.0150, subp. 2. A. - Gravity Distribution.

147. The Agency acknowledged an ongoing debate as to whether serial distribution methods other than drop boxes are as effective as drop boxes. The Agency addressed this issue in connection with a comment from Bruce Benson, Zoning Administrator, Carlton County. Mr. Benson opposed the requirement that only drop boxes must be used for distribution. Instead, he proposed the use of a header pipe to distribute effluent to the trenches. Mr. Benson indicated that this was a practice that has been used for many years with success.

148. The Agency agreed that header pipes could be a suitable alternative to distribution boxes. The Agency proposes the following language:

A. ~~Drop boxes or valve boxes~~ Serial distribution must be used to distribute effluent to individual trenches in a soil treatment system unless the necessary elevation differences between trenches for drop boxes cannot be achieved by natural topography or by varying the excavation depths, in which case parallel a distribution box or a valve box shall be used. If drop boxes are used they ~~The drop boxes~~ must meet the following standards.

149. The proposed change is reasonable and does not constitute a substantial change.

7080.0150, subp. 2 A (3) Gravity Distribution.

150. Jeff Peterson, Scott Environmental Health Services, recommended that the MPCA make a clarification on drop box specifications. The Agency agreed with Mr. Peterson and proposes the following change:

The invert of the outlet pipe to the next drop box shall be no greater than at least two inches higher than the crown of the outlet pipe of the trench in which the box is located.

151. The proposed change is reasonable and does not constitute a substantial change.

7080.0150, subp. 3 F - Pressure Distribution.

152. Dr. Roger Machmeier observed that mound rockbeds are excluded from the requirements in this part. The Agency indicated that the words “seepage bed” were added so as not to limit the spacing of laterals in pressure trenches and the term seepage bed was meant to infer that a mound was an elevated seepage bed. The MCPA acknowledged that Dr. Machmeier had a valid concern and proposes the following:

F. Laterals must be spaced no further than 60 inches apart in seepage beds and mound rock beds and must be spaced no further than a horizontal distance of 30 inches from the outside edge of a drainfield rock layer.

153. The proposed change is reasonable and does not constitute a substantial change.

7080.0160, subp. 1 C. - Dosing Chambers.

154. Dr. Roger Machmeier observed that the rule is unclear if the 500 gallons is the total liquid capacity or some other volume. The Agency agrees that clarification is necessary and proposes the following:

C. The dosing chamber shall either include an alternating two-pump system or have a minimum total capacity of 500-gallons capacity or 100 percent of the average design flow, whichever is greater.

155. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 1 - Final Treatment and Disposal.

156. Terry Neff, Aitkin County Environmental Services, and Dr. Roger Machmeier recommended a change to the language in this section from “discharge into the soil” to “discharge into the soil treatment system”. The Agency agreed with this grammatical change and proposes the following:

Subpart 1. In general. Final treatment and disposal of all sewage tank effluent shall be by discharge into the soil treatment system.

157. The proposed change is reasonable and does not constitute a substantial change.

7080.0170 FINAL TREATMENT AND DISPOSAL.

Subpart 1. In general.

Item A. Soil sizing factor.

158. The MPCA proposes to insert “in accordance with Table V” after “factor” on line 2, page 41, for the purpose of clarity.

Subpart 2. Trenches and seepage beds.

Item B. Trenches and seepage beds.

159. The MPCA proposes to delete “plastic” on line 24, page 44 because the term plastic is not necessary and could cause confusion with material types that are allowed. Part 6070.0170, subp. 2, B, (3), (b) identifies that the pipe must meet ASTM F667, so the term plastic or any other material term is not necessary in (a).

Subpart 3. Dual field systems.

160. The Agency proposes to revise item C as follows:

C. A part of the soil treatment area shall be used no more than one year unless ~~inspection of~~ the effluent level indicates that a longer duration can be used.

161. The Agency explained that there is no change in meaning. The intent is only to delete the term “inspection” so it is possible for a property owner or system operator to evaluate whether liquid is present, not to require a Designer I or Inspector endorsed ISTS professional to make that determination.

162. The proposed changes in subparts 1, 2 and 3, above, are reasonable and do not constitute a substantial change.

7080.0170, subp. 2, item A, subitem (3), Table IV.

163. Gary Englund identified an error in the rule references for the first asterisk. The Agency agreed and proposes the following rule change: The sentence beginning on line 36 and ending on line 37 of page 43 should read: “Setbacks from water supply wells and buried water pipes are governed by chapters 4725 and 4715, respectively.”

164. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 2 B (3) (b) ii - Gravelless Pipe.

165. Both Dr. Machmeier and Dr. James L. Anderson warned against specifying hole placement on the gravelless pipe and specification of a proprietary product.

166. The Agency indicated that it specified two sets of holes place 120 degrees apart because it was the hole spacing on the pipe which was researched. Therefore, the Agency does not know what changes in performance would occur if the hole spacing were different. The Agency believed that all manufacturers of gravelless pipe use this hole spacing. Both Dr. Machmeier and Dr. Anderson mentioned that hole spacing was critical for solids storage, but Dr. Machmeier recommended that any specifications on hole alignment be dropped. Therefore, a manufacturer could produce a product with one hole placed at the bottom, which would provide no solids storage. The Agency believes that the specifications, as written, accommodates all manufactures products as the Agency has been in contact with them all. However, Dr. Machmeier and Dr. Anderson are the authors of the research used to include this technology in the rule. Therefore, the Agency will modify the standard as follows:

- ii. The pipes shall contain ~~two~~ a row or rows of cleanly cut three-eighths inch to one-half inch diameter holes located in such a manner to provide storage of solids ~~120-degrees apart, with each row 120-degrees to each side of the alignment stripe.~~ Each row shall contain a hole in every other corrugation valley, staggered such that every corrugation valley contain one hole.

167. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 2. C. (2) System sizing - Leachbed Pipe.

168. Gary Englund, Minnesota Department of Health, recommended that the Agency make a clarification to avoid confusing the word “bed” with “seepage bed”. The Agency agreed and proposes the following changes:

- (2) Gravelless drainfield pipe media. Sizing shall be based on subitem (1), except no reduction shall be given as specified in subitem (1). An eight-inch ID pipe shall be equivalent to a two-foot wide rock filled trench ~~bed~~ with six inches of drainfield rock below the distribution pipe and a ten-inch ID pipe shall be equivalent to a three-foot wide rock filled trench ~~bed~~ with six inches of drainfield rock below the distribution pipe.

169. The proposed change is reasonable and does not constitute a substantial change.

7080.0170 subp. 2. C. (3) System Sizing - Chamber Systems.

170. Gary Englund, Minnesota Department of Health, recommended that the Agency make a clarification of language needed on sizing chambers. The Agency explained that chambered systems are sized the same as rock-filled trenches with the only difference being slatted sidewalls versus side wall area in contact with rock. Therefore, the Agency proposes the following language:

(3) Chambered media. Sizing shall be based on subitem (1) with the depth of slatted sidewalls being equivalent with the corresponding depth of rock below the distribution pipe.

171. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 2 D (4) - Final Treatment and Disposal.

172. Terry Neff, Aitkin County Environmental Services, recommended that for excavation, the soil plastic limit only applies to the bottom and sides of the soil treatment system.

173. The Agency agreed with the refinement of this section. It should be noted that "soil treatment area" is defined as the soil area in contact with the distribution medium. Therefore, the Agency proposes the following:

(4) The bottom and sides of the soil treatment system to the top of the distribution medium shall be excavated in such a manner as to expose the original soil structure in an unsmeared and uncompacted condition. Excavate into the soil treatment area only when the soil moisture content is at or less than the plastic limit. ~~at all depths of excavation.~~

174. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 4 - Rapidly Permeable Soils.

175. David Gustafson and Tony Ruppert recommended that mound systems be used (as a standard system) to overcome soils with a perc rate of <.1 minutes per inch. The Agency agreed with these commentators and proposes the following language:

(line 14 is now labeled A. Line 18 is now labeled (1). Line 21 is now labeled (2). Addition starting on line 25):

B. Soil treatment systems placed in soils with percolation rates less than one-tenth minutes per inch, must provide at least one of the following treatment techniques:

(1) a mound system; or

(2) a trench system with at least one foot of clean sand placed between the distribution medium and the coarse soil along the excavation bottom and sidewalls if provisions of A. (1) or A. (2) are followed; or

(3) in accordance with 7080.0910 subpart 3. B..

176. The proposed change is reasonable and does not constitute a substantial change.

177. Dr. James L. Anderson recommended that the Agency change the reference from a percolation rate measurement to a soil sizing factor. The Agency agreed, noting, however, that this change will not require fine sand soils to be included with this section. The amended language is as follows:

Subp. 4. Rapidly permeable soils. Soil treatment systems placed in soils with ~~percolation rates between one-tenth and five minutes per inch,~~ a soil sizing factor of 0.83 gal/day/ft², must provide at least one of the following treatment techniques:

178. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 5 A (3) - Final Treatment and Disposal.

179. Gary Englund, Minnesota Department of Health, observed that a clarification was needed on setbacks for mound systems.

180. The Agency responded indicating that the language found in the current rule is correct. However, others have commented to the Agency about whether a setback from the upslope edge and ends of a mound rock bed is really necessary. Many people are confused in trying to comply with this requirement. The Agency sees very little environmental gain by adding the five extra feet as a safety factor. In addition, this additional requirement is inconsistent with setbacks from in-ground and at-grade systems. Therefore, the Agency proposes the following:

(3) Setbacks shall be in accordance with Table IV, subpart 2, item A, subitem (3). ~~For mounds on slopes less than or equal to one percent, the absorption area is the required absorption width by~~

~~rock bed length plus five feet on each end of the rock bed. For mounds on slopes greater than one percent, the absorption area is the required absorption width plus five feet on the upslope side of the rock bed by rock bed length plus five feet on each end of the rock bed.~~

(Change table IV to required absorption width, change all “absorption areas” to “required absorption width”.)

181. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 5 B (3) - Minimum Depth of Sand for Mounds.

182. Dr. Roger Machmeier proposed that the current 12-inch minimum sand depth should be maintained.

183. The Agency agreed with Dr. Machmeier and proposes the following:

(3) A minimum of ~~six~~ twelve inches of clean sand must be placed where the rock bed is to be located.

184. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 5 B. (10) - Mounds.

185. Dr. James Anderson and David Gustafson recommended that four feet should be added to the absorption area for double wide rock beds.

186. The Agency agreed with the commentators that this change is needed. However, the Agency believes a more appropriate placement is in 7080.0170 subpart. 5 B (4). As a side note, the Agency did not review or consider changes to this section, however in dealing with double wide rockbeds the Agency would like to see more performance data on double wide rock bed mounds to see how they are operating. The Agency proposes the following language:

(4) The required absorption width is calculated by multiplying the rock bed width by the absorption ratio. The absorption ratio shall be determined according to Table VI using the percolation rate of the upper 12 inches of soil in the proposed absorption area. For mounds with side-by-side rock beds, the required absorption width shall be increased by four feet.

187. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 5, Item C, subitem (3).

188. Terry Neff indicates problems with soil disturbance if mound sand is placed and then rainfall occurs.

189. The Agency agreed and proposes to amend this Part 7080.0170, subpart 5, item C, subitem (3) again. The rule language should read as it appeared in the July 6, 1995, proposed draft rules. “(3) All surface preparation must take place when the upper 12 inches of soil has a moisture content of less than the plastic limit and soil conditions allow field testing of soil properties and these properties are maintained throughout installation.”

190. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 5 D. (5) - Mound Construction.

191. David Gustafson recommended that the rules allow the planting of other vegetation on mounds other than grass. The Agency agreed with Mr. Gustafson. This change should also be made on trench, beds and at-grade systems. The Agency recommends the following language:

.0170 Subp 2 D (11) (trenches and beds): (11) a grass vegetative cover shall be established over the soil treatment system. The soil treatment system shall be protected until a grass vegetative cover is established. The vegetative cover established shall not interfere with the hydraulic performance of the system and provide adequate frost and erosion protection.

.0170 Subp 5 D (5) (mounds) A grass vegetative cover must be established over the entire area of the mound. The soil treatment system mound shall be protected until a grass vegetative cover is established. The vegetative cover established shall not interfere with the hydraulic performance of the system and provide adequate frost and erosion protection.

.0170 Subp 6 C (8) (at-grades) A grass vegetative cover must be established over the entire area of the at-grade system. The soil treatment system at-grade system shall be protected until a grass vegetative cover is established. The vegetative cover established shall not interfere with the hydraulic performance of the system and provide adequate frost and erosion protection.

192. The proposed change is reasonable and does not constitute a substantial change.

7080.0170, subp. 6 B (1) - At-Grade Systems.

193. Numerous commentators, including Dr. James Anderson, Dr. Roger Machmeier, David Gustafson, Gary Englund, Michael Herman and David Morisette requested that a method to determine the linear loading rate should be provided in the rule.

194. The Agency responded stating that it would like to see a method to determine linear loading rate in the rule. However, no methods have ever been tested or proven to be correct, including the method used in the training manual. The current rule gives a general description of the linear loading rate and leaves the actual determination up to the designer. The Agency believes that the linear loading rate is important, but not absolutely critical to the performance of the system. The Agency believes that it is a further refinement for an additional degree of safety. Therefore, if the estimate of the linear loading rate is not exact, it would still afford some degree of refinement. Therefore, the Agency proposes no method of calculating the linear loading rate until such methods have been proven.

195. The Agency's decision not to include a linear loading rate in the proposed rule is reasonable.

7080.0170, subp. 6 C. (3) - At-Grade Systems.

196. Terry Neff, Aitkin County Environmental Services, objected to allowing the rock bed to deviate from the contour by one foot for at-grades. Mr. Neff believed that at-grade systems should be treated the same as mound systems. The Agency agreed with the commentator and proposes the following change:

(3) The upslope edge of an at-grade system shall be installed along the natural contour. ~~with no more than a 12-inch difference in elevation from the upslope corners of the rock bed.~~

197. The proposed change is reasonable and does not constitute a substantial change.

7080.0175 MAINTENANCE.

Item B.

198. At the New Ulm public hearing, Donald Albrecht commented on the rule requirement for an individual sewage treatment system to be inspected every three years; therefore, the owner would have to be licensed. On a different topic, Randy Dorow, at MOSTCA/Extension pre-hearing meeting, indicated that manhole covers must be brought to the surface or at least within 12 inches of the ground surface for all systems, new or existing.

199. The Agency responded first to Mr. Albrecht's concern, indicating that it did not intend to require all portions of individual sewage treatment systems to be inspected every three years. The intent of part 7080.0175 is for property owners to identify when their ISTS needs maintenance. The changes now reflect that intent. Second, the Agency explained that the changes made under item B reduce the complexity of the homeowner's review of the system. The requirements originally proposed were too rigorous for the homeowner and, thus, not implementable. Third, with respect to Mr. Dorow's comment to require existing manholes to be brought to within 12 inches of the ground surface, the Agency indicated that this is a necessary accommodation for licensed pumpers to be able to access tanks and properly maintain them in accordance with their license. It is not, however, the pumper's responsibility to install the manholes. There are other requirements for property owners or their agents within these rules; it is reasonable to include the requirement for installing manholes as the responsibility of the property owner. The obligations of the licensee are then to notify the property owner of the need to upgrade for proper maintenance and document this request; then, if the property owner refuses, the pumper's license is not at risk.

200. The Agency proposes that Items B and C should be changed as follows:

B. The owner of an individual sewage treatment system or the owner's agent shall regularly, but in no case less frequently than every three years, ~~inspect the septic tank, drop boxes, distribution boxes, soil treatment system, and other related appurtenances for signs of corrosion, leakage, accumulation of liquids and solids, and any other related items that may indicate the need for maintenance.~~

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C. ~~At each inspection~~ measure or remove the accumulations of scum, which includes grease and other floating materials at the top of the septic tank along with sludge, which includes the solids denser than water, ~~must be measured or the contents removed.~~ The owner of a septic tank or the owner's agent must arrange for the removal and proper disposal of septage from the tank whenever the top of the sludge layer is less than 12 inches below the bottom of the outlet baffle or whenever the bottom of the scum layer is less than three inches above the bottom of the outlet baffle.

201. The proposed changes are reasonable and do not constitute substantial changes.

Item E.

202. The Agency proposes to revise item E as follows:

E. ~~Whenever inspections of pump stations, distribution devices, valve boxes, or drop boxes indicate the~~ Any accumulation of solids, the accumulation in pump stations, distribution devices, valve boxes, or drop boxes shall be considered septage.

203. There is no change in meaning. The intent is only to delete the term “inspection” so it is possible for a property owner or pumper to evaluate whether an accumulation of solids is present, not to require a Designer I or Inspector endorsed ISTS professional to make that determination.

Item I.

204. The Agency proposes to replace “replacement” with “additional soil treatment area” on line 30, page 62. This change is made for clarity and consistency. The terms “additional soil treatment area” are used throughout the rest of the rule.

205. The proposed changes in Items E and I are reasonable and do not constitute substantial changes.

Item J.

206. At the hearing in St. Paul, Bill Schueller, Fergus Power Pump, Inc., requested the inclusion of the Terralift system in the ISTS maintenance portion of chapter 7080. He requested specific language that would set requirements for use of the Terralift system. Exhibit 19 (Minnesota Extension Service Letter summary of the MOSTCA hearings) suggests language be added to describe that maintenance done to the soil treatment system be subject to certain provisions (i.e., to develop requirements for the use of the Terralift).

207. The Agency responded indicating that the Terralift technology is not prohibited in chapter 7080. The intent of the rules is to provide minimal, reasonable and reliable standards and criteria for the siting, design, installation, use and maintenance of an ISTS. Agency staff avoid adding proprietary product names within the rules and hesitates from adding recommended procedures that have not been proven reliable over time. The Terralift concept is new to Minnesota and does not have sufficient history at this time for the state to provide specific criteria or methodologies for its use within these minimum rules.

208. The Agency explained that it was somewhat reluctant to add language concerning methods to improve acceptance of sewage from systems which are clogged with solids. This reluctance stems from the perception that if this type of maintenance is

included in the rule, it may imply that the Agency endorses this type of practice. The Agency's lack of endorsement stems from the fact that the Agency has no data that maintenance treatments to the system are effective, except resting. However, methods have been developed and promoted in the state which may need to be regulated. The agency proposes the following language for part 7080.0175:

(Add a new item part 7080.0175, Item J to read:)

J. Any maintenance activity used to increase the acceptance of effluent to a soil treatment system must:

(1) not be used on failing systems;

(2) not to decrease the separation to the saturated soil or bedrock;

(3) not cause preferential flow from the system bottom to the saturated soil or bedrock; and

(4) be conducted by a qualified employee or under an Installer license.

209. The Judge notes that the word "to" in paragraph "(2)" above is wrong but harmless. The proposed change is reasonable and does not constitute a substantial change.

7080.0175, Item C - Maintenance.

210. Michael Herman and David Morissette, Minnesota Department of Transportation, inquired about maintenance requirements for multiple tanks or compartments.

211. The Agency explained that the rule does not address when the tank needs maintenance if multiple tanks are used or if a tank has multiple compartments. Therefore, the Agency proposes the following:

C. At each inspection, the accumulations of scum, which includes grease and other floating materials at the top of ~~each~~ the septic tank and compartment along with the sludge, which includes the solids denser than water, must be measured or the contents removed. The owner of a septic tank(s) or the owner's agent must arrange for the removal of septage from ~~all~~ the tanks or compartments in which ~~whenever~~ the top of the sludge layer is less than 12 inches below the bottom of the outlet baffle or whenever the bottom of the scum layer is less than three inches above the bottom of the outlet baffle. Maintenance shall take place through the manhole. All accumulations of sludge, scum and liquids must be removed through the manhole. The owner or owner's agent shall install manholes in sewage tanks in accordance with part 7080.0130,

~~subpart 2 to allow for maintenance to take place through the manhole. If the sewage tank, other than a holding, has a manhole, all accumulations of sludge, scum and liquids must be removed from the tank.~~

212. The proposed change is reasonable and does not constitute a substantial change.

7080.0175, items D and F - Maintenance.

213. Michael Herman and David Morissette, Minnesota Department of Transportation, also observed that regulations dealing with additives should be kept together in the rule. The Agency agreed and proposes the following change:

D. Individual sewage additives must not be used as a means to reduce the frequency of proper maintenance and removal of septage from the septic tank as specified in item B.

~~—E~~ F. Whenever inspections of pump stations, distribution devices, valve boxes, or drop boxes indicate the accumulation of solids, the accumulation shall be considered septage.

~~—F.~~ E. Individual sewage treatment system additives which contain hazardous materials must not be used in individual sewage treatment systems.

214. The proposed change is reasonable and does not constitute a substantial change.

7080.0175, subp. F - Maintenance.

215. Gary Englund, Minnesota Department of Health, recommended that the Agency clarify the term “hazardous materials”.

216. The Agency agreed with the commentator and proposes the following:

F. Individual sewage treatment system additives which contain hazardous substances ~~materials~~ must not be used in individual sewage treatment systems.

(Also changes to 7080.0065 B.)

Footings or roof drainage shall not enter any part of a system. Products containing hazardous waste and hazardous substances ~~materials~~ must not be discharged to a system other than in normal amounts of household products and cleaners designed for

household use. Substances not intended for use in household cleaning including solvents, pesticides, flammables, photo finishing chemicals, and dry cleaning chemicals must not be discharged to the system.

217. The proposed changes are reasonable and do not constitute substantial changes.

7080.0176 A. - System Abandonment.

218. David Gustafson recommended that the term "granular", used to describe the soil material used to fill abandoned systems, should be deleted. The Agency agreed with the commentator's change. The term "granular" has some special specifications associated with it in the construction industry which are not applicable to abandoning an ISTS. Therefore, the Agency proposes the following language:

A. Tank abandonment procedures for sewage tanks, cesspools, leaching pits, dry wells, seepage pits, privies, and distribution devices are as follows: all solids and liquids shall be removed and disposed of in accordance with part 7080.0175 and abandoned chambers shall be removed or be filled with ~~granular~~ soil material.

219. The proposed change is reasonable and does not constitute a substantial change.

7080.0300 GENERAL.

Subpart 5. Other jurisdictions.

220. Robert Hutchinson indicated that inspections are conducted to assure compliance with local ordinances and the rule should reflect this thought. In response, the Agency proposed a rule change for clarity. The first sentence of the second paragraph in Subpart 5 should read:

If other jurisdictions issue construction permits for individual sewage treatment systems, compliance inspections must be conducted in accordance with ~~to approve systems according to this chapter.~~

221. Robert Hutchinson indicated that the rules should clarify how long records must be kept. In response, the Agency proposed that the last sentence of subpart 5 should read:

The other area jurisdiction must maintain records of the location and design of ~~the~~ individual sewage treatment systems for the life of the systems.

222. The proposed changes to subpart 5 are reasonable and do not constitute a substantial change.

7080.0020, new subpart 12b.;7080.0300, new subpart 6; 7080.0315, item A; 7080.0350, item A; and 7080.0700, new item E

223. Minn. Stat. § 115.55, subd. 6 requires that a seller of real property make disclosures regarding ISTS. That section provides, in part, as follows:

After August 31, 1994, before signing an agreement to sell or transfer real property, the seller must disclose in writing to the buyer information about the status and location of individual sewage treatment systems on the property or serving the property. The disclosure must be made by delivering to the buyer either a statement by the seller that there is no individual sewage treatment system on or serving the property or a disclosure statement describing the system and indicating the legal description of the property, the county in which the property is located, and a map drawn from available information showing the location of the system on the property to the extent practicable.

224. David Swenson and John Forrest recommended that the Agency insert a new part in the rule with corresponding definitions to address the new disclosure requirements. Rochelle Rubin indicated that there are too many terms describing systems (conforming, nonconforming, complying, noncomplying) and suggested the use of standardized inspection forms and Certificates of Compliance.

225. MPCA responded to these comments by proposing rule changes to clarify the disclosure requirements. The Agency reasoned as follows. The terms “status” and “location” of an ISTS are used in Minn. Stat. § 115. Location is described in the statute as the legal description of the property, the county in which the property is located and a map drawn from available information showing the location of the system on the property to the extent practicable. Status is described in the statute as an indication of whether the ISTS is in use, a description of the system, and an indication of whether the system is in compliance with applicable laws and rules. The status and location requirements of the statute are clear. What it means to be “in compliance” is not clear. The Agency has chosen to define what “in compliance” means (part 7080.0060) and to clearly identify the criteria that must be evaluated to determine whether a system is in compliance (parts 7080.0020, subpart 16a and 7080.0060). It is also not clear whether a property owner/seller can disclose anything about the ISTS without conducting a

compliance inspection and being licensed. The Agency's proposed rule changes have addressed these issues.

226. With respect to the concerns raised by Ms. Rubin, the agency proposes deletion of terms not used in the rule (conforming and nonconforming) and more clearly defines what "in compliance" with applicable requirements means (part 7080.0060). The Agency is currently developing an existing system inspection manual and will include recommended inspection forms, Certificates of Compliance, and Notices of Noncompliance. In addition, Ms. Rubin has contacted the agency on the desire to work with the legislature and the agency to develop standardized disclosure forms.

227. The Agency proposes the following changes:

Add a new subpart 12b to part 7080.0020 and revise the numbering/lettering on the other subpart 12's. The new subpart 12b should read: Subp. 12b. **Disclosure.** "Disclosure" means any conclusions or statements regarding an ISTS made by a seller of a property with or served by an ISTS to fulfill the requirements of Minn. Stat. § 115.55, subdivision 6.

12**bc**. Distribution box....

12**ed**. Distribution device....

12**de**. Distribution medium....

Add a new subpart 6 to part 7080.0300 to read: Subp. 6. **Disclosure.** Any evaluation, investigation, inspection or other such process to make conclusions, recommendations or statements regarding an ISTS to fulfill the requirements of Minn. Stat. § 115.55, subd. 6 which is conducted by a party independent of the seller to fulfill this statutory requirement shall constitute a compliance inspection and must be conducted in accordance with 7080.0315 or part 7080.0350..

Add a sentence to part 7080.0315, subpart 2, item A: "A. to ensure compliance with applicable requirements. Persons conducting compliance inspections for disclosure shall also meet the requirements of part 7080.0300, subpart 6."

Add a sentence to part 7080.0350, subpart 2, item A: "A. Compliance inspections are required for all new construction or replacement and must be completed according to items A and B. Persons conducting compliance inspections for disclosure shall also meet the requirements of part 7080.0300, subpart 6.

Add a new item E to part 7080.0700, subp. 1 to read: E. a seller of property who personally gathers information, evaluates, or

investigates the ISTS on or serving the seller's property to provide a disclosure as defined in part 7080.0020, subpart 12b.

228. The proposed changes will clarify disclosure requirements. The changes are reasonable and do not constitute a substantial change.

REQUIREMENTS FOR LOCAL UNITS OF GOVERNMENT WITH A LOCAL ORDINANCE

7080.0305 GENERAL REQUIREMENTS FOR LOCAL ORDINANCES.

7080.0305, subp. 3 and 7080.0350, subp. 3. Variances.

229. At the public hearing in Grand Rapids, Dale Schroeder observed that the rule's variance procedures were unclear. The Agency agreed with Mr. Schroeder and proposed clarification to the variance provisions. Revisions are proposed to reference the reader to Part 7080.0030, subpart 3, which defines the Agency's standard variance procedures. Minn. R. ch. 7000 is the administrative process surrounding variance approvals. The submittal requirements were also clarified to assure the reader understands the procedures for review. The Agency proposes the following changes:

Revise Part 7080.0305, subpart 3 as follows:

Subp. 3. **Variances.** After December 31, 1995, a local unit of government shall not issue a variance for replacement, or for the addition of a bedroom or bathroom on property served by a system unless the individual sewage treatment system is in compliance with local ordinance, as evidenced by a certificate of compliance. A variance shall not be issued for new construction unless a permit for new construction has received preliminary approval and includes a construction schedule. Only the governing state agency may issue variances to chapters 4725, 6105, and 6120. Variances to decrease the three feet of vertical separation required beneath the distribution medium and the saturated soil or bedrock must be approved by the commissioner in accordance with part 7080.0030, subpart 3. The variance shall be accompanied by items described in subpart 6 as appropriate to the request and must contain:

A. the specific language in the rule or rules from which the variance is requested;

B. the reasons why the rule cannot be met;

C. the alternative measures that will be taken to assure a comparable degree of protection to health or the environment if the variance is granted;

D. the length of time for which the variance is requested;

- E. a statement that the party applying for the variance will comply with the terms of the variance, if granted; and
- F. other relevant information the commissioner determines necessary to properly evaluate the request for the variance.

Revise Part 7080.0350, subpart 3 as follows:

Subp. 3. Variances. Variances to chapters 4725, 6105, 6120, and 7080 may only be approved by the governing state agency. Variances to chapter 7080 must be approved by the commissioner in accordance with part 7080.0030, subpart 3. The variance shall be accompanied by items described in subpart 6 as appropriate to the request and must contain:

- A. the specific language in the rule or rules from which the variance is requested;
- B. the reasons why the rule cannot be met;
- C. the alternative measures that will be taken to assure a comparable degree of protection to health or the environment if the variance is granted;
- D. the length of time for which the variance is requested;
- E. a statement that the party applying for the variance will comply with the terms of the variance, if granted; and
- F. other relevant information the commissioner determines necessary to properly evaluate the request for the variance.

230. The Agency's clarification of the variance procedures as manifest in these changes is reasonable. The changes are not substantial changes.

Subp. 4. Requirements for local ordinances.

Item A.

231. The Agency proposes to add “, within a reasonable time period” immediately after the word “applicable” on line 9. As a basis for this change, the Agency explained that Minn. Stat. § 115 was designed to systematically address ISTS. The statute is compromised if the rules require compliance inspections, notices of noncompliance, an upgrade requirement, but no time period to upgrade. It is reasonable for the LUG to make the determination for the upgrade time period constraints to base decisions on local circumstances, but still have an end-date for upgrade.

232. The proposed change is reasonable and does not constitute a substantial change.

7080.0305, subp. 7 - Review Process for Alternative Standards.

233. Jeff Peterson, Scott County Environmental Health, observed that lines 12-15, page 67, are not a complete sentence. In response, the Agency proposes a change as follows:

Subp. 7. **Review process for alternative standards.** After the request for review and the supporting items required under subpart 5 are submitted to the commissioner and determined to be complete, ~~the~~ the commissioner must evaluate the proposed alternative standards in consultation with specialists qualified to evaluate submitted research to determine if the proposed alternative standards will protect public health and the environment.

234. The proposed change is reasonable and does not constitute a substantial change.

7080.0310 PERMIT PROGRAM FOR INDIVIDUAL SEWAGE TREATMENT SYSTEMS.

Subpart 2. State license categories.

Item D.

235. Cyndi Spencer, MOSCTA, recommends that this section be amended to include the cleaning of drainfield lines as an aspect of a pumper's duties. In addition, it was recommended that installers still be the professional category which would conduct actual repairs.

236. The Agency agreed with the recommendation and proposes to amend 7080.0700 subp. 2 D, by adding on line 18 the following language, "...., or drop boxes; cleaning building sewers, supply pipes and distribution pipes; and..." The Agency also indicated that the current language reflects that repairs to components, other than the listed tank components, must be conducted by an licensed installer.

237. The proposed change is reasonable and does not constitute a substantial change.

7080.0310, subp. 2 and subp. 4, Item C.

238. Bruce Benson suggested the rules be clarified to indicate that construction records be kept by the contractor, not by the LUG. The Agency agreed and proposes that the first sentence of subpart 2 should be revised as follows:

ISTS permit applications must include exhibits described under subpart 4, items A and B and include ~~indicating~~ general

requirements to adequately identify the property and owners, a site evaluation report, a design summary and drawings, applicable construction information and any other information requested by the permitting authority pertinent to this process.

239. The Agency explained that this subpart refers to permit application information. This information is pre-construction; and there will most likely not be any plastic limit tests, construction dates, weather conditions, etc. known at that point (as identified in subp. 4, item C). The intent of requiring “applicable construction information” as part of the permit application is to identify any noteworthy construction conditions that should be identified in the permitting process and followed through during the inspection process.

CHANGE: The Agency also proposes to change the first sentence of subpart 4, item C as follows:

~~C. construction records including plastic limit test results, sand and rock cleanliness comments or test results, dates of construction, weather conditions, plan changes, any problems encountered and their resolution, and as-builts.~~

The Agency explained the basis for this change stating that Part 7080.0020, subpart 4c defines as-builts and includes most of the deleted items as part of the as-built. It is redundant to include them and also require an as-built. Part 7080.0850, subpart 5, item D identifies the specific reporting and recordkeeping responsibilities for individuals with installer endorsements, such as providing evidence to verify compliance with applicable requirements, maintaining quality control/quality assurance records, and maintaining as-builts of work. Requiring the as-built to be submitted to the LUG if the LUG regulates ISTS through ordinances. It is reasonable to require filing of as-builts to assure accurate ISTS records exist for future reference.

240. The proposed changes are reasonable and do not constitute a substantial change.

REQUIREMENTS IN AREAS WITHOUT A LOCAL ORDINANCE

7080.0350 GENERAL REQUIREMENTS.

Subpart 1. Requirements for work done on individual sewage treatment systems

241. Kay Gysbers requests that the rule state that local units of government cannot require additional bonds or insurance from state licensed contractors. She also supports a one year moratorium on any county’s additional ordinance (requirements). Cyndi Spencer requests that language be added to preclude local units of government from requiring additional bonds and insurance. Joseph Lahr, Roger Rimpby and John

Bruender also comment that they don't want local units of government to place additional bonding, insurance and permit requirements on licensed contractors.

242. In response to these requests, the Agency concluded that no rule change should be proposed. The Agency explained that after consulting with its attorney, the Agency does not believe that it has the authority to prohibit local governments from making these additional requirements.

243. The Agency's response is reasonable and consistent with the Agency's statutory authority.

INDIVIDUAL SEWAGE TREATMENT SYSTEM LICENSE PROGRAM

7080.0700 LICENSES.

7080.0700, subp. 1. State License Required Item B.

244. Jeff Peterson, Scott County Environmental Health, observed potential problems with the rule as written because builders that own several lots can install these systems without a license. The Agency responded proposing that Item B should be modified as follows:

"B. an individual who is constructing a system on land that is owned or leased by the individual and functions solely as the dwelling or seasonal dwelling for that individual after consulting with a designer I or II."

245. The proposed change is reasonable and does not constitute a substantial change.

7080.0700, subp. 2. State License Categories Item D.

246. David Gustafson suggests language be added to clearly state that pumper licenses cover portable toilet maintenance and pump replacement. In response, the Agency proposes that subpart 2 should be amended to read:

D. pumper license for measuring scum and sludge depths for the accumulation of solids and removing these deposits; maintaining portable toilets; storing and hauling septage; disposing of septage; identifying problems related to sewage tanks, dosing chambers, baffles, manhole covers and extensions, and pumps and making repairs; and inspecting and evaluating water tightness of sewage

tanks, dosing chambers, distribution devices, valve boxes, or drop boxes; and

247. The proposed change is reasonable and does not constitute a substantial change.

**Subpart 4. Restricted licenses.
Item C.**

248. The Agency proposes to correct the language in this Item. The Agency observed that the language in this item does not accurately reflect the process for restricting licenses to limit the scope of duties that can be performed by the licensee. The way the proposed rule is worded and the reference to pt. 7080.0850, subpart 5, the license seems to be the vehicle for restricting a registered professional.

249. The Agency explained that restricting a license for performance is a two-part process. First, the ISTS professional will acquire a restricted registration and then the license is restricted to correspond to the registration. An individual may also have a restriction added to his/her registration as an enforcement measure. The Agency also explained that the rule as proposed inappropriately mixes licensing with registration. These issues need to be separated and addressed in their appropriate places in the rule. Therefore, the Agency concluded that the following changes are needed:

C. as a method to limit the ~~amount of responsibility for specialty area endorsements under scope of the work to be conducted under the license to coincide with restrictions placed on the designated registered professional in accordance with part 7080.0850, subpart 5~~ 7080.0860, subpart 6.

- 250. The proposed change is reasonable and does not constitute a substantial change.

**7080.0705 APPLICATION FOR LICENSE; FEES;
RENEWAL.
Subpart 1. Eligibility.
Item A.**

251. The MPCA is proposing to add “with specialty area endorsement matching the requested license” after the word “professionals” on line 3.

252. The Agency explained that the reason for this change is this rule item may be referenced by individuals that do not have full knowledge of the intricacies of the license program, such as persons trying to submit license applications or MPCA staff providing assistance. Therefore, the above change is needed to clearly describe the

qualifications of a registered professional as they relate to license approval. The above change mirrors language that originally proposed under the definition for “designated registered professional,” part 7080.0020, subpart 12a.

253. The proposed change is reasonable and does not constitute a substantial change.

7080.0715 LICENSE CONDITIONS.

Subpart 1. General license conditions.

Item F.

254. The training and experience requirements for pumper truck operators was commented on by Wayne Johnson of Pelican Rapids, Ron Okerstrom, President Fergus Power Pump, Inc; Randy Dorow and Loren Haws of Ottertail, Minnesota and Cyndi Spencer of MOSTCA.

255. Ron Okerstrom believes that a Designated Registered Professional should not be required to be on site during pumper activities. Randy Dorow and Loren Haws believe that all pumpers and each driver should be state certified for each truck and be registered with the State, instead of just one Designated Registered Professional per business. Wayne Johnson of Pelican Rapids has similar comments and wishes to add that a Designated Registered Professional be on the worksite at all times. Cyndi Spencer of MOSTCA recommended the elimination of the requirement that an apprentice with a pumping endorsement be on the worksite in the absence of the designated registered professional.

256. The Agency responded to Mr. Okerstrom stating that this rule requires Designated Registered Professionals to be on the worksite only during critical periods. Subp. 1 F. allows an apprentice with a pumping endorsement to be on the worksite in the absence of a Designated Registered Professional, so that in all cases someone with training will be on the worksite. However, the comments from Mr. Dorow and Mr. Haws disagree with this position. They feel a fully registered professional must be on the worksite at all times. The MOSTCA recommendation expresses the opposite view: no requirements should be placed on those working for a licensee.

257. The Agency’s initial position on this issue was a compromise between the two views: an apprentice with a pumper endorsement had to be at the worksite. The MPCA staff took this issue to the ISTS Advisory Committee on Friday, September 22, 1995. The committee supported the opposition and agreed that the requirement for a pumper apprentice should be removed from the conditions for a license. Therefore, the MPCA proposes to make this deletion from the proposed rules and add conditions for the pumper DRP under Subp. 2.

258. The Agency’s proposal to delete Item F from this Subpart is reasonable and does not constitute a substantial change.

259. During the process of preparing the response to Robert Hutchinson's letter relating to part 7080.0720, the MPCA discovered an inconsistency in the proposed rules. The qualifications for inspectors is not consistent for LUGs and businesses. The Agency explained that this is a problem because a licensed inspector can do the same work as an LUG inspector. In many cases an LUG will contract with a licensed inspector rather than hire another employee. Also, licensed inspectors will be performing construction and compliance inspections in areas where there is no ordinance to regulate ISTS.

260. Currently, the proposed rules do not require the same training and examination requirements for LUG and business employees. A business employee can work in the ISTS field with no knowledge of ISTS as long as he/she is receiving direction and personal supervision from the business' DRP who has a registration that corresponds to the type of work being performed. The LUG employee on the other hand must, at a minimum, have the training and examination required under the rule (an apprentice). The Agency stated that this discrepancy is inappropriate for inspectors because inspectors function as the checks and balances for the ISTS industry. Inspectors set the standards for the industry through the judgments they make. For these reasons, the MPCA believes the requirements for inspectors must be the same for LUG and business and that the following condition be added under part 7080.0715, subp. 1, item F:

provide an apprentice with an inspector or designer 1
endorsement to conduct inspections.

261. The implementation scheme established by the proposed rule assumes that a DRP is available for each business licensee to provide technical expertise. The rules assume that a properly functioning business will provide the technical expertise necessary to conduct a competent inspection regardless of the experience and training of the individual who actually conducts the inspection. However, the Agency's proposed change questions whether "on-call technical expertise" is adequate for a role as important as inspection of ISTS.

262. The Judge agrees with the Agency that individuals who actually conduct inspections perform a most important function in the implementation scheme of the ISTS program. A lack of technical expertise in this role could place the entire ISTS program at risk.

263. The proposed change will affect the way a licensee conducts ISTS business. Numerous commentators have provided their views on the impact of the proposed rules in the operation of their businesses. The Agency has been responsive to the concerns raised by these licensees. For example, the Agency changed its views on the pumper apprentice issue after substantial discussion and debate on this issue. While there was significant discussion and debate about the pumper apprentice issue, this rule proceeding has had no comment or debate on the change now being proposed

by the Agency. Proposing the change at this time will foreclose any such discussion and debate. Applying the standards for substantial change as discussed earlier in this Report (at Finding 29) leads the Judge to conclude that the rule change proposed by the Agency results in a substantial change. It makes the rule fundamentally different from the published proposal. To correct this defect, the Agency must withdraw the proposed change.

Subpart 2. Conditions for Designated Registered Professional.

264. At the New Ulm public hearing, Mr. Herbert Wenkel, Blue Earth County Sanitarian, raised concerns about lack of experience on the work site. He would like to see the Designated Registered Person be required to be on the worksite during construction. At the Grand Rapids public hearing, Kay Gysbers, Gysbers Excavating, Goodhue County, raised concerns about the rule requirements regarding Designated Registered Professionals on the worksite. Ms. Gysbers would like to see less stringent requirements imposed in the rules

265. The Agency responded that it has attempted to make this portion of the rule flexible in order to accommodate a wide variety of conditions. The rules give the business owners and the Designated Registered Professionals responsibility to provide enough direction and personal supervision so that the job is done in accordance with applicable requirements. The Agency does allow flexibility in the rules to accommodate the different phases of work (i.e. critical work periods like at the time of inspection) and differing experience levels of the crews. The Agency believes that the current rule language is strong enough to enforce against the license if unqualified people are performing the work. The Agency did not support a rule change at this time, but may revisit this issue in the future.

266. The Agency's decision to not change the worksite requirements of Designated Registered Professionals is reasonable.

267. The MPCA proposes to add the following language to the DRP conditions as a replacement:

provide a DRP to make repairs and to inspect and evaluate water tightness of sewage tanks, dosing chambers, distribution devices, valve boxes or drop boxes.

The Agency explained the reasons for the new requirement. The MPCA stated that by removing the requirement to have an apprentice on the pump site in the absence of the DRP, anyone is allowed to be a pumper. The person will most often be working onsite alone without inspection and receiving instruction by two-way radio. Training is left solely up to the discretion of the business. The Agency stated that pumping involves many safety concerns, exposure to toxic gases related to sewage, and confined spaces dangers. Due to these health risks and the potential for having individuals whose only ISTS education has been training for pumping sewage from the tank into a holding

truck, the MPCA proposes to require the DRP for a pumper license to make repairs and inspecting and evaluating water tightness of sewage tanks, dosing chambers, distribution devices, valve boxes or drop boxes.

268. The proposed change is reasonable and does not constitute a substantial change.

7080.0720 QUALIFIED EMPLOYEE.

269. Robert Hutchinson, County of Anoka, requests that part 7080.0720 be deleted. He states that the requirements reference under this part of the rule do not relate to qualified employees and disagrees with the discussion on page 137 of the Statement of Need and Reasonableness that states "...It also imposes requirements for the qualified employees to oversee the work of the ISTS professionals working within their jurisdictions."

270. The MPCA responded stating that it agreed with Mr. Hutchinson regarding the sentence from the SONAR. The Agency further stated that it wants the roles and responsibilities of licensees, DRPs and qualified employees to be as clear as possible to prevent confusion in the industry during the implementation of the state licensing/registration program. The MPCA explained that it has tried to clarify roles and responsibilities of licensed and qualified employees under pts. 7080.0715, 7080.0720, and 7080.0850, subp. 5. It is true that the qualified employee is exempt from "obligations of a license," and pt. 7080.0720 could be changed as follows to make this clearer:

A qualified employee must fulfill the conditions under part 7080.0715, subpart 2, items A, B, D to F, that are applicable to the work being performed.

271. The conditions referenced do relate to qualified employees because the qualified employee for a LUG is the equivalent to the DRP for a license. Most LUG ISTS programs only involve inspectors, but some existing programs also do site evaluations and designs. The MPCA included the condition "...that are applicable to the work being performed" to clarify that only the items under pt. 7080.0715, subp. 2, that correspond to the working being performed by the individual qualified employee need to be fulfilled.

272. The clarifying language proposed above is reasonable and does not constitute a substantial change.

7080.0815 EXPERIENCE.

Subpart 1. Options to gain experience.

Item A.

273. The MPCA proposes to add on line 12 after the word “professional” the following: “who has a specialty area endorsement and works under a license that is the same as the specialty area sought by the individual acquiring the experience.”

274. The Agency explained that this change is needed to clarify the intent of the rule. Item A is the exemption afforded under Minn. Stat. §. 115.56, subd. 2(b)(3). Since work associated with each license type requires different knowledge and skills, it is reasonable and logical to require individuals gaining experience to conduct their work under a license that is the same as the experience they need to fulfill the registration/license requirements. This also ensures that the work of the student worker is covered by the bond and insurance of the company.

275. The proposed change is reasonable and does not constitute a substantial change.

Item B.

276. The proposal contained in Exhibit 14 to add the word “of” is no longer needed due to the more extensive change proposed for this item. The MPCA proposes to modify item B as follows:

B. Experience completed under a signed agreement for direction and personal supervision with a qualified employee who has a specialty area registration endorsement that is the same as the specialty area sought by the individual acquiring the experience, a designer 1 or an inspector ~~for direction and personal supervision when the individual seeking the experience has and under a restricted license because a lack of held by the individual seeking the experience that corresponds to the specialty area endorsement sought .”~~

277. The Agency explained that the above changes are needed to clarify which LUG staff can provide supervision and direction to individuals seeking experience for registration as an ISTS professional. Additional changes are being made to improve the sentence structure and make the Item easier to read.

278. The proposed change is reasonable and does not constitute a substantial change.

Item C.

279. The MPCA proposes to change item C as follows:

“experience completed under a plan approved by the commissioner. A restricted license must be issued if a designated registered professional will be working under an approved experience plan. where the individual seeking the experience has a restricted license because of the lack of experience corresponding to the specialty area endorsement sought.

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280. The Judge notes that the proposed change to Item C is the same as proposed in Exhibit 14 except the Agency offers a more comprehensive justification for the change. For example, the Agency explained that this method of gaining experience was proposed for two reasons: 1) to provide persons in the ISTS industry some flexibility to be creative with how they team up with licensed persons, ISTS persons in other states, and other qualified ISTS experts to acquire the experience required for registration/license. 2) to respond to individuals that requested that the “experience” be defined loosely so that more alternatives exist, such as counting higher education or experience gained in other states.

281. The proposed change is reasonable and does not constitute a substantial change.

282. The following professional engineers objected to this subpart on the basis that professional engineers are not receiving enough credit for the engineering license under the licensing program: William J. Trygstad, John P. McDonald, Michael Herman, David Morisette, John Ernster and Larry Peterson.

283. Mr. Trygstad requested that the rule be changed so that engineers licensed in the State of Minnesota and working as Civil and/or Sanitary engineers on a day-to-day basis and licensed engineers that have taken ISTS training and passed the examination are exempt from the experience requirements under Ch. 7080. Mr. McDonald, Mr. Herman and Mr. Morisette, had similar comments. Mr. Ernster and Mr. Peterson state that the ISTS licensure requirements for professional engineers is redundant, that the experience requirement should be waived and any complaints about unqualified professional engineers performing ISTS design should be pursued through the Minnesota State Board of Architects, Engineers, Land Surveyors, Landscape Architects, and Interior Design.

284. In its response, the MPCA stated that it believes requiring professional engineers to have an ISTS license is appropriate. The MPCA believes that working through another state organization (the Minnesota State Board of Architects, Engineers, Land Surveyors, Landscape Architects, and Interior Design) to take enforcement actions mandated to the agency under Minn. Stat. § 115.56, subd. 3, would be inefficient and impracticable. Minn. Stat. § 115.56 does not provide an exemption to the ISTS license for professional engineers.

285. The MPCA acknowledged that professional engineers have advanced education and that many have experience related to ISTS. However, because not all

engineers have had training that is related to ISTS, the MPCA does not want to put a blanket exemption to the experience requirement for all engineers. The experience plan option under part 7080.0815, subpart 1, item C, provides professional engineers an opportunity to submit their credentials to the MPCA for an experience equivalence evaluation.

286. The MPCA's decision on this issue is a reasonable exercise of the Agency's discretion.

Subpart 8. Reduction of required experience.

287. Upon reviewing the continued education requirements proposed under the rule in response to the comment letter received from. David Gustafson, Minnesota Extension Service, the MPCA found that "continuing education" is improperly used in this subpart for reduction of required experience. The MPCA proposes to correct the language as follows:

The experience requirements under subparts 3 to 7 may be reduced from 15 to ten work products if 12 hours of ~~continuing education~~ accredited or authorized training are taken in addition to the training required under parts 7080.0805, subpart 1; 7080.0810, subpart 2; and 7080.0820.

288. The proposed change is reasonable and does not constitute a substantial change.

7080.0820 CONTINUING EDUCATION.

Subpart 1. Renewal requirements.

289. David Gustafson, Minnesota Extension Service, stated that the proposed rule does not clearly state whether or not the twelve hours of continuing education is required for each of the different specialty areas if a registered professional has multiple endorsements.

290. The Agency responded stating that the MPCA's intent is for the continuing education requirements to be the same for one or more specialty area endorsements. In an effort to clarify the rule requirement, the MPCA proposes the following change:

...hours of continuing education under items A ~~and~~ or B that meet the criteria under subpart 2 for each three-year period. The continued education requirement is not increased for multiple specialty area endorsements.

291. The proposed change is reasonable and does not constitute a substantial change.

292. Cyndi Spencer, MOSTCA, raised a concern over the Agency's proposal to reduce the continuing education hours from 15 in a three-year period in the voluntary certification program to 12 for the new licensing program. The Agency stated that the reasons for decreasing the training hours are:

- a. Increase initial training
- b. The Agency is planning a newsletter to keep ISTS professionals current on a frequent basis
- c. The increased staff time for the extra 1/2 day without compensation
- d. Contractor's time for extra night in motel, meals and lost work time
- e. To reduce the amount of time contractors are in training. Most contractors are involved in other activities besides ISTS and these other areas also require training. Some contractors have told the agency that the combination of all training needed is overly burdensome.
- f. New specialty workshops will now be offered. It is anticipated that most of these workshops will be 12 hours in length. Therefore if 15 hours are to be required these specialty workshops would not be long enough. That would require the agency or University to offer other classes 15 hours in length or ISTS professionals to attend more than one 2-day class.

293. For these reasons, the Agency decided to keep the 12 hours of continuing education and propose no changes to the noticed rule. The Agency's decision is a reasonable exercise of its discretion.

7080.0850, ISTS PROFESSIONAL REGISTRATION

Subp. 5, item E.

294. Jeff Peterson, Scott County Environmental Health, identified an incomplete sentence in this Item. The Agency proposes that Item E should be modified as follows:

E. Individuals who have pumper endorsements must have the knowledge and ability to measure scum and sludge depths for the accumulation of solids and, as needed, completely remove, store, and haul septage; properly dispose of septage; identify problems related to sewage tanks, baffles, manhole covers, and extensions, and make repairs as necessary; and ~~inspect,~~ evaluate watertightness of sewage tanks, dosing chambers, distribution devices, valve boxes or drop boxes, and properly dispose of septage.

295. The proposed change is reasonable and does not constitute a substantial change.

7080.0855 APPRENTICE.

Subpart 2. Apprentice required.

296. The Agency proposes the following change to subpart 2:

Subp. 2. Apprentice required. Individuals and qualified employees who will acquire their experience according to the methods under part 7080.0815, subpart 1, item B or C, (a) must be designated by the commissioner as an apprentice. (b) are eligible to be designated registered professionals under a license if the individuals have a specialty area endorsement that corresponds to the license, fulfill the contractual requirements for acquiring experience, and operate under a restricted license that corresponds to the specialty area endorsement sought.

297. The MPCA explained that this change is needed to clarify that an apprentice can be a designated registered professional (DRP). The MPCA intended to allow an apprentice to be a DRP. This is reflected in the definition for “designated registered professional” under part 7080.0020, subp. 12a. However, the rule as proposed seems to only allow registered professionals to be DRPs. Part 7080.0850, subpart 3, requires designated registered professionals to be registered. This rule change will allow the proposed definition for DRP to be fully implemented.

298. The proposed change is reasonable and does not constitute a substantial change.

7080.0860 ADMINISTRATION OF PROFESSIONAL REGISTER AND APPRENTICE PROGRAM.

Subpart 6. Restrictions; conditions.

299. Gary L. Englund, Minnesota Department of Health, expressed concern about MDH employees meeting experience requirements mandated by the rules. Mr. Englund states that MDH performs plans and specification reviews for ISTS, which is only a portion of the responsibilities under pt. 7080.0850, subp. 5, for an inspector.

300. The Agency responded stating that Mr. Englund’s issue is similar to comments raised by Brian Noma, MDH ex officio representative, with the ISTS Advisory Committee. Mr. Noma raised concern over MDH employees ability to meet the proposed experience requirements for qualified employees. Discussion at the committee meeting included the possibility of adding performance restrictions to an ISTS professional registration that reflect work being performed that does not encompass the spectrum of specific responsibilities identified under part 7080.0850, subpart 5 for the corresponding specialty area. For example, MDH employees could

use desk-top reviews to meet their experience requirement, but their inspection endorsement would be restricted and not allow them to perform field inspections.

301. The MPCA staff proposed this subpart, in part, to address Mr. Noma's concerns. The MPCA proposes to add the following reference to tie performance back to the specific responsibilities for registration.

...professional registration ~~of~~ or apprentice designation at any time to address unusual work situations, or experience requirements, to take enforcement action under part 7080.0900, or to limit the scope of responsibilities under subpart 5 for an individual.

302. The proposed change is reasonable and does not constitute a substantial change.

ALTERNATIVE AND EXPERIMENTAL SYSTEMS

7080.0910 ALTERNATIVE & EXPERIMENTAL SYSTEMS.

7080.0910 (General) Alternative and Experimental System.

303. Allan Meadows and Myra Ahlgren of International Falls expressed concern over the proposed rule's lack of alternatives for mound systems.

304. The Agency agreed that the rule lacks alternatives for mounds. MPCA explained that the reason for the lack of alternatives is because few other options exist which can meet the criteria so as to be included in the rule. These criteria are: 1) That the system protects surface waters, ground waters and the public health 2) That the disposal is sub-surface 3) That the system is cost effective (capital and maintenance cost as compared to system longevity) 4) That the system is reliable 5) That the system can be designed and installed by trained professional with available equipment 6) That the system can be operated and maintained by homeowners.

305. MPCA explained that the Agency realizes the difficulty that a homeowner has with very poor soil and site conditions with no technology to accommodate their situation. However, the Agency cannot be responsible to provide reliable options for sites with extreme situations such as sites with watertables above the ground surface or pure ledgerrock situations. However, it is the Agency's responsibility to assess new options when they are developed. In direct answer to the commentator's concern the Agency has included an experimental section in the rule so any technology can be tried if acceptable to the LUG and if the property owner is willing to pay for a system of unknown reliability.

7080.0910 D, subp. 1. - Alternative Systems.

306. Dr. Roger Machmeier and David Gustafson recommended that an equivalent to a three-foot vertical separation distance to the watertable or bedrock be provided versus a strict three-foot vertical setback.

307. MPCA responded indicating that the Agency agreed with the commentators but believes that this provision is currently contained in the rule 7080.0305 subp. 3 - Variances. This section states that the agency can grant a variance to the three foot vertical setback to watertable or bedrock. The language proposed by the commentator may allow LUG's to approve systems without a three-foot separation without consent of the Agency. This would give the LUG' s too much latitude in approving systems and could allow the classification of existing systems without the vertical separation as experimental. However, the Agency is willing to add language to this section to make the reader aware that a variance can be granted by the state if an experimental system, with less than three feet to the water table or bedrock, is proposed. Therefore, the Agency recommends the following language:

D. a three-foot minimum separation is provided between the bottom of the distribution medium and the saturated soil or bedrock.
Proposed experimental systems which do not provide this minimum separation must follow the variance procedure as prescribed in .0305 subp. 3. ;

308. The proposed change is reasonable and does not constitute a substantial change.

7080.0910, subp. 3, item C, subitem (1) - Artificial drainage.

309. This provision generated substantial discussion, particularly at the New Ulm public hearing. Laine Sletta and Donald Albrecht followed up their New Ulm testimony with a letter that asked what type of procedures are necessary to verify that an artificial drain is providing three feet of vertical separation. Mr. Albrecht and Herman Miller requested additional language for determining water table depths in drained areas. Charles Enter indicated that requiring engineering calculations for artificial drainage situations is an unnecessary expense.

310. Terry Neff requested clarification on whether engineering calculations are required for both interceptor lines and artificial drainage. The Agency responded to Mr. Neff stating that calculations are not required for interceptor lines upslope of a soil treatment system; calculations are required for artificial drainage designed to lower the water table.

311. The Agency proposed a rule change to address Mr. Sletta's, Mr. Albrecht's and Mr. Miller's concerns. The Agency explained that if artificial drainage is used as a

method to artificially lower the water table, some type of monitoring ports must be strategically placed around the soil treatment system, at a depth of at least three feet below the bottom of the distribution device and water table depths must be measured over time. The Agency indicated that piezometers are typically used (small-diameter, capped PVC pipe, typically with a short well screen, extending deeper than the existing or proposed soil treatment area). Water levels must be observed over time and must include a high water period. The MPCA proposes that this language be added for clarification.

312. The Agency proposed a rule change in response to Mr. Enter's comment about the expense of engineering calculations. The Agency indicated that Mr. Enter raised a valid concern. The MPCA's goal in requiring engineering calculations was to determine in theory whether the artificial drain will work in a case-by-case circumstance. Requiring a Professional Engineer (P.E.) seemed the most technically-valid approach. However, after additional investigation, the Agency verified the cost estimates identified by Mr. Enter and came to the conclusion that the cost of involving a P.E. to conduct calculations may be unreasonable for all situations. The Agency still has chosen to require some type of calculation by someone prior to installation of the artificial drain. The MPCA has chosen to allow the LUG flexibility in determining what is acceptable as a calculation submittal. It should be noted that the rule in part 7080.0910, subpart 1, items A and B allow use of alternative systems if "A. reasonable assurance of performance of the system is presented to the permitting authority;" and "B. the engineering design of the system is first approved by the permitting authority."

313. The Agency proposes the following change to address the concerns discussed above. Revise as follows:

C. (1) Where natural drainage will not provide three feet of separation between the bottom of the distribution medium and the highest known level of saturated soil, artificial drainage may be used to intercept or lower the seasonal high water table, except within shorelands of public waters. There shall be at least ten feet of undisturbed soil between the sidewall of the soil treatment unit and the artificial drainage. Designs to lower the seasonal high water table must be supported by engineering calculations and monitoring after installation. Water table measuring piezometers shall be strategically placed, capped, and extend at least three feet lower than the bottom of the soil distribution medium. Monitoring shall occur by measuring water table depths prior to installation and over time, including during wet periods. Monitoring records must be maintained. If the artificial drain includes a dedicated surface discharge, periodic sampling as approved by the permitting authority must occur.

314. The Agency gave its view on ISTS installations and artificial drainage. Because of the substantial discussion of artificial drainage at the New Ulm hearing, the Judge is including the following Agency discussion.:

The agency sees a great need to address artificial drainage. It is frequently used by LUGs, installers and property owners to avoid the installation of other types of ISTS, such as a mound. If a situation occurs where artificial drainage can achieve a three foot vertical separation, the agency supports such actions. But too often the LUG verifies a high water table and immediately prescribes an artificial drain at the same depth and same distance for all ISTS installations, regardless of soil type, if impermeable layers exist or groundwater depth and movement. The agency wants the LUG to verify that the artificial drain will, in theory, work by requiring submittal of calculations. The previous commentators suggest requirements for monitoring, which will also enhance the knowledge base for the functionality of these types of systems.

Some notes to clarify: There is a common perception that agricultural drain tile *significantly* lowers the water table. Agricultural drain tile typically lowers the water table only a matter of inches. It lowers it just enough to allow for planting and rooting to begin during the spring wet periods. Installation of artificial drains typically requires a severe drop in the water table, sometimes six feet or more (to place an in-ground system AND have three feet of vertical separation).

Installation designs for agricultural drainage are based on rate of fall, not maintaining a vertical separation of unsaturated soil. The Soil Conservation Service data identifies artificial drain spacing for various soil series. Some examples: the Tripoli Series requires 80 foot drainage spacing to lower the water table 1/4 inch in a 24-hour period; Twig Series requires 16 feet and Udolpho Series 340 feet. The depth and spacing depend on the soil series and water movement. In the spring, there will be huge volumes of water that must be moved through the tile, rainwater and high groundwater.

The commentator indicated that artificial drains are convenient because they can be easily and inexpensively placed because the "clean water" can be discharged to a pre-existing drain line right on the property. The water discharging to an artificial drain may look "clean" because it is typically not turbid. Research clearly shows that BOD/TSS is effectively removed in as little as one foot. BOD/TSS are terms used to describe sewage constituents. BOD/TSS create turbidity in sewage effluent because it includes dissolved and suspended solids. The water is typically not "clean;"

however, because it most likely still contains viruses and pathogens that can negatively impact public health. In reality, a risk assessment is needed to assess the level of risk for the discharge of certain viruses and pathogens. The risk assessment would investigate soil series, well construction, well placement, groundwater movement, and level of health risk per virus or pathogen discharge. An enormous task. The three feet of vertical separation is the criterion to limit the discharge of viruses and pathogens to reasonably protect public health.

The agency encourages LUGs to join with geographical organizations and regional development groups to gather data and make recommendations. The agency is also moving in this direction by prioritizing work plans on Minnesota's river basins to investigate environmental priorities and implement local designs based on local soil, water and air sensitivities.

Item K.

Subitem (1).

315. The MPCA proposes to replace "nonconforming" with the term "failing" on line 12. Insert ", systems which pose an imminent threat to public health or safety" immediately after "systems" on line 12.

316. The Agency explained that "nonconforming" is not used anywhere else in the proposed rule and the definition is proposed to be deleted. This change provides clarity to when a holding tank can be installed when the term nonconforming is no longer used. There is little change in administrative implementation.

317. The proposed change is reasonable and does not constitute a substantial change.

7080.0910 subp. 3 A. (1) - Alternative Systems.

318. Gary Englund, Minnesota Department of Health, identified an incomplete reference. The Agency agreed with Mr. Englund and proposes that "(b)" be added to correct this reference as follows:

Soil treatment systems placed in soils with percolation rates between 61 and 120 minutes per inch shall comply with units (a), (b), (c), and (d) and part 7080.0170.

319. The proposed change is reasonable and does not constitute a substantial change.

7080.0910, subp. 3 H.

320. Jeff Peterson, Scott County Environmental Services, recommended that this section on waste disposal should be moved to item G.

321. The Agency agreed but proposed to move the language to 7080.0020 subpart 31, definition of septage. If included there it would fall under the disposal practices of 7080.0175 item G. The Agency proposes the following changes:

7080.0020 Subp. 31. Septage.

"Septage" means solids and liquids removed during periodic maintenance of an individual sewage treatment system, or solids and liquids which are removed from toilet waste treatment devices or a holding tank.

(Also changes to 7080.0910 subpart 3 H.)

~~H. All materials removed, including ashes, compost, and all solids and liquids shall be disposed of according to state, federal, or local requirements.~~

(Also, items I, J and K need to be renumbered.)

322. The proposed changes are reasonable and do not constitute a substantial change.

7080.0910, subp. 3 J 2 (i) - Collector Systems.

323. Dr. Roger Machmeier proposed that dosing chambers for collector systems have two pumps. The Agency agreed with Dr. Machmeier and proposes the following:

(i) Pumps and dosing chambers shall be sized to handle 50 percent of the average design flow in a one-hour period. Common pump tanks shall have a pumpout capacity of ten percent of average design flow ~~plus a reserve capacity of 25 percent of the average design flow or~~ and two alternating pumps.

Change also need for (j):

(j) An separate alarm system for each pump shall be provided for all pumping stations to warn of pump failure, overflow, or other malfunction.

324. The Judge also notes that the article “an” in (j) above should also be changed so as to agree with the word “separate”. The change proposed by the Agency is reasonable and does not constitute a substantial change.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Minnesota Pollution Control Agency gave proper notice of the hearing in this matter.

2. That the Agency has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule.

3. That the Agency has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i)(ii).

4. That the Agency has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii).

5. That the amendments and additions to the proposed rules which were suggested by the Agency after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, Subp. 1 and 1400.1100, except as noted at Finding 263.

6. That the Administrative Law Judge has suggested action to correct the defects cited in Conclusion 5, as noted at Finding 263.

7. That due to Conclusions 5 and 6, this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3.

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Agency from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the proposed rules be adopted except as otherwise noted in Conclusions 5 and 6 above.

Dated this 31st day of October, 1995.

ALLEN E. GILES
Administrative Law Judge